S. HRG. 99-318

ANTHONY G. SOUSA NOMINATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF ANTHONY G. SOUSA TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION

OCTOBER 3, 1985

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
55-935 O WASHINGTON : 1986

S311-11

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CONTENTS

STATEMENTS

	Page
Matsunaga, Hon. Spark M., a U.S. Senator from the State of Hawaii	4
McClure, Hon. James A., a U.S. Senator from the State of Idaho	1
Sousa, Anthony G., nominee to be a member of the Federal Energy Regulatory Commission	3
Wilson, Hon. Pete, a U.S. Senator from the State of California	2

APPENDIXES

APPENDIX I

Biographical and informational statements of Anthony G. Sousa 31

APPENDIX II

Responses to additional committee questions from Anthony G. Sousa 48

ANTHONY G. SOUSA NOMINATION

THURSDAY, OCTOBER 3, 1985

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10:04 a.m., in room SD-366, Dirksen Office Building, Hon. James A. McClure (chairman) presiding.

Present: Senators McClure, Nickles, Hecht, Bumpers, Ford, and Bradley.

Also present: E. David Doane, senior counsel; D. Michael Harvey, chief counsel for the minority; and Elizabeth Moler, counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. Good morning.

The purpose of today's hearing is to consider the Presidential nomination of Anthony G. Sousa to be a member of the Federal Energy Regulatory Commission. Mr. Sousa has served as a member of the Federal Energy Regulatory Commission since September 1981. Prior to his appointment from 1973 to 1981, Mr. Sousa was vice president and general counsel of the Hawaiian Telephone Co.

He has served as a rate analyst, counsel, and administrative law judge with the California Public Utilities Commission.

He is a graduate of the University of San Francisco Law School and holds a master of laws degree in public utility regulation and antitrust law.

I would note that during the past 4 years, Mr. Sousa has served as the lead Commissioner on two major issues: reform of hydroelectric licensing procedure and rate treatment of natural gas imported from Canada.

In that capacity, he has testified before this committee and we are pleased to welcome him back today.

I note that we have with us our colleague from the State of California, the Honorable Pete Wilson. I would at this time recognize him.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you, Mr. Chairman. I will detain you only briefly, because by the eloquence of your opening statement, you've made clear that you are thoroughly familiar with Mr. Sousa's background and with the obvious fact of his eminent qualifications to continue service that he has rendered already on the Commission.

So it hardly seems necessary for me to introduce him to you. I will merely indulge in the point of personal privilege of expressing my pride in the fact that he has served so well and that I have the pleasure to represent him. And I must say he has represented me in his work on the Energy Commission, the Regulatory Commission. He obviously enjoys it, and it seems to me he should be rewarded with a second term.

So, with that, I will, in the interests of your time and that of the committee, I will say no more; simply ask that you do what I know you are going to do anyway, and that is act promptly.

The CHAIRMAN. Thank you very much, Senator Wilson. Your opinion is respected here and we are very happy to have you here. I know that Mr. Sousa is happy to have you here as well.

Mr. SOUSA. I certainly am, Senator.

The CHAIRMAN. We will make a part of the record at this point an introductory statement by Senator Matsunaga from Hawaii, who wanted to be here to testify in person, and was unable to be here at this particular hour, so we will note his presence by the introduction of his statement in the record.

[COMMITTEE NOTE.—Senator Matsunaga's statement appears after Mr. Sousa's statement.]

The CHAIRMAN. Mr. Sousa, as you know, the rules of the committee, which apply to all nominees that require our consent requires that they be sworn in connection with their testimony.

Will you please rise and raise your right hand?

[Whereupon, Anthony G. Sousa was duly sworn by the chairman.]

The CHAIRMAN. Please be seated.

You know, again from your experience, that there are four questions addressed to all such nominees, and I would like to ask those questions of you.

Will you be available to appear before this committee and other congressional committees to represent the Commission positions and respond to issues of concern to the Congress?

Mr. SOUSA. Yes, I will, Mr. Chairman.

The CHAIRMAN. Your informational statement has been submitted to the committee. However, it is required that this statement be made public unless the committee decides that special circumstances justify an exception.

Do you have any objection to the publication of your informational statement?

Mr. SOUSA. No, I do not.

The CHAIRMAN. Are you aware of any personal holdings, investments, or interests that could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed

and assume the office to which you have been nominated by the President?

Mr. SOUSA. I know of no conflict, Mr. Chairman.

The CHAIRMAN. Are you involved in, or do you have any assets held in blind trusts?

Mr. SOUSA. No, I do not have any.

The CHAIRMAN. Mr. Sousa, before beginning your statement, I will ask if my colleagues have any statements they wish to make before proceeding to your statement.

Senator NICKLES. No, Mr. Chairman.

Senator HECHT. No, Mr. Chairman.

The CHAIRMAN. I would also like to note the presence of your wife, Elvira. It's nice to have you with us as well.

Mr. Sousa, you may proceed.

STATEMENT OF ANTHONY G. SOUSA, NOMINEE TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION

Mr. SOUSA. Thank you, Mr. Chairman.

Mr. Chairman and distinguished members of the committee, I am pleased to be here this morning to be considered for a second term as a member of the Federal Energy Regulatory Commission. I am deeply honored by President Reagan's renomination of me to that position, and it will be an equally great honor if I receive this committee's approval and the full Senate's confirmation.

I am in a somewhat unusual, though not unprecedented, position of coming before you as a second timer. As such, I will not reiterate my educational and employment experience prior to my joining the Commission in 1981, although I will gladly answer any questions that you may have about that experience.

I began my tenure at the Commission with limited energy experience, especially from a national perspective. However, I felt that I was qualified to serve by virtue of my experience and training in regulatory and legal matters, which I believe would enable me to make a contribution to the Commission and to my country.

At the time of my first confirmation hearing in 1981, I made a commitment to become knowledgeable in all areas of the Commission's jurisdictional responsibility. In completing 4 years as Commissioner, I feel more than ever that I am qualified to serve.

During those 4 years I have acquired an appreciation of the heavy responsibilities that regulators have, and it is my firm belief that a regulator's duties should be approached very responsibly, with constant attention to maintaining a careful balance between the regulated utilities and the consumers.

Additionally, I am more convinced than ever that regulators are not legislators, and should guard against usurping the powers of legislators. Legislators enact the laws, and regulators administer those laws.

In response to a question by Chairman McClure during my first confirmation hearing, I stated that I would appear willingly before congressional committees, when requested. I am happy to say that on several occasions, I appeared without hesitation before both House and Senate committees, on both oversight and legislative hearings, and reiterate my willingness to appear before congres-

sional committees to represent Commission positions and respond to issues of concern to the Congress.

In my last 4 years at the Commission, I have done my best to carry out my duties in a conscientious and responsible manner and I pledge to do the same again in my next term.

Mr. Chairman and members of this committee, on my way over this morning, I was reflecting on my appearance before this committee the last time. I believe they were easier and happier times. At that hearing, after I presented my statement, Mr. Chairman, you said I have no questions of you and I do not know of any questions that the other members have.

And I thought to myself, how nice it would be if we could get the same thing again today. [Laughter.]

But I guess I'd be asking a little too much if I expected that. But I do hope that I'll get the full approval of this committee, even if I do get all the questions. And I want to say at this time that I am in the unusual situation of being a sitting Commissioner who has partaken and participated in pending matters, and to the extent that I do not want to jeopardize myself, I have been cautioned by general counsel of the Commission to be careful in my answers. But I do want to say that I want to be forthright, and I want to answer any questions that I am able to and can answer.

I have my general counsel here with me. I think he's decided to be here so that I will not stray into forbidden areas. Bill Satterfield is here.

The CHAIRMAN. Yes, I noted his presence, and I am sure you welcome it.

I would like to recognize the fact that Senator Matsunaga, in spite of our earlier information, was able to get here. Senator, I had said that I understood you wanted to be here, but found it impossible to be here, so I am glad to find that you are here indeed.

Senator FORD. He overcame the impossible.

The CHAIRMAN. That's par for the course for our colleague from Hawaii.

Senator MATSUNAGA. Thank you. Well, that's what we all do, don't we--Members of the Senate—overcome the impossible?

The CHAIRMAN. Welcome back to this committee.

Senator MATSUNAGA. Thank you.

STATEMENT OF HON. SPARK M. MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator MATSUNAGA. As a former member of this committee, Mr. Chairman and members of the committee, you will recall that 4 years ago I introduced Mr. Anthony G. Sousa to this committee on the occasion of his initial nomination as a member of the Energy Regulatory Commission. At that time, I observed that it was a rare and exhilarating opportunity for me as an elected official, to reach across the political aisle and offer unqualified support for the President's nominee, since the President had in his wisdom selected an outstanding resident of the State of Hawaii for membership on the Commission in the person of Mr. Sousa.

In the 4 years since confirmation, Mr. Sousa has served with distinction, and I have had no cause to regret my unqualified support in 1981.

Mr. Sousa came to Washington with a background in utility regulation, gained from both the vantage point of a regulator and a utility executive. In Hawaii, he served as vice president and general counsel of the Hawaiian Telephone Co. Prior to accepting this position, he had been for 5 years with the California Public Utilities Commission as counsel, senior counsel, and finally administrative law judge.

Before joining the Commission, he held a management position with the Lipton Tea organization. Mr. Sousa is a graduate of Lincoln University Law School in San Francisco and earned his master of laws degree from the University of California at Berkeley.

Incidentally, I hold an honorary degree from the Lincoln University.

He's a member of the California State Bar Association, the Hawaii State Bar Association, and the International Bar Association. He enjoys, I must say, an excellent reputation in Hawaii where he has been very active in civic affairs as well.

Mr. Chairman, members of the committee, in the case of Mr. Sousa, it is my strong belief that one good term deserves another. [Laughter.]

The CHAIRMAN. That has a familiar ring. [Laughter.]

Thank you very much, Senator.

I know that Mr. Sousa appreciates, as we do, the statement that you have made. Your opinion is respected in this committee. We reflect upon your service in this committee for so many years. It's nice to have you back with us again.

Senator MATSUNAGA. Thank you very much.

The CHAIRMAN. Thank you.

Senator Ford, do you have any questions?

Senator FORD. Mr. Sousa, you're right and wrong. I imagine the questions you will get today will be easy for you to answer, so we'll get on with it.

I understand your earlier statement that you must be careful in answering any questions about the Commission's position in some ongoing situations there. And I know you have to be careful in answering the questions I'm going to pose. But it's about the Commission's notice of proposed rulemaking on natural gas transportation issues before the Commission.

I also know that you must understand the intense degree of interest in this committee and elsewhere on that same subject. So I do have a few questions about NOPR that I believe you should be able to answer without prejudicing your situation. Some of these questions are designed, I hope, to put some rumors to rest about your participation.

And we'll start out with a couple of them. I was told that action on the NOPR was scheduled last week, and that it was deferred at your request. Is that correct?

Mr. SOUSA. That's not true.

Senator FORD. That's not true. You want to straighten that out?

Mr. SOUSA. Yes, sir.

I would be less than honest if I did not say that the thought did occur to me that it would be good if it did not come up at the time of my confirmation. But the fact of the matter, sir, is that the rule is far from complete and it had an extremely lot of work to be done on it.

We have seen drafts of it, and as I came here this morning, I learned that it has been put on the Commission agenda for the ninth. That is a function of the Chairman. He has the call to put it on or not to put it on, although the other Commissioners have a courtesy of asking that it be taken off or deferred.

I have not done that, and I can honestly say that it was not in a condition for us to have voted on prior to today.

Senator FORD. Well then, the next meeting is October 9.

Mr. SOUSA. That's correct.

Senator FORD. And it is scheduled for action then at your next Commission meeting.

Mr. SOUSA. It is. But I can also say that at this point today, there is still work being done on it and I assume that there will be a lot more work done between now and the 9th. And I can also say that I don't know that by the 9th that it will still be ready to be voted on in its entirety. That's as far as I can go.

I couldn't go into the merits of it, but I can tell you that it is not yet ready to be voted on as of today.

Senator FORD. Let's go a little further. The Natural Gas Act provides that any party to a proceeding may petition for a rehearing on any action taken under authority of the act.

If you act on NOPR next week, say that if you do, that gives parties until the second week of November, as I calculate it, to petition for a rehearing.

My question, then, is how does the Commission plan to meet the October 31 deadline for action on a new transportation program set by the U.S. Court of Appeals--I believe it's in Maryland's people's counsel cases—if action is not taken until next week.

Mr. SOUSA. I really am not exactly sure how we will cope with that. I do know that there is a timeframe within which we have to act, and then there's a time for them to petition for rehearing or reconsideration.

I would believe that if it is put out, the Commission would hope—at least it would be my hope that we do not prevent parts of it, or that part which would respond to the court's mandate on the remand. I would hope that we would not be the instrument—the Commission would not be the instrument to stop that from proceeding.

But I really don't know at this point how that would be held. That would be a procedural matter, and maybe I can refer to some of—Bill, would you like to answer as to how we would deal procedurally with the question that the Senator just put to us?

[Mr. Sousa confers with counsel.]

Mr. SOUSA. Senator Ford, I was told that the decision would not automatically stop unless somebody asked for a stay or the Commission itself stayed it at the request of someone. So it would proceed unless there was a stay ordered either by the court or by the Commission itself.

Senator FORD. Let's visit that a little bit further. You're an attorney.

Mr. SOUSA. Yes.

Senator FORD. And I presume you're familiar with the legal requirements for Commission proceedings under the Natural Gas Act.

If, for any reason, the Commission does not have a quorum the second week of November, and the time period for petitions for rehearing expires, what happens?

Mr. SOUSA. I guess, to use a bad pun, the Commission goes out of commission.

I'm not being facetious, but honestly, sir, if we do not have a quorum, then the Commission would not be able to meet and we would not be able to have Commission meetings to vote on that NOPR.

Senator FORD. That indicates something anyhow.

I'd like for you to have the Commission's general counsel, since he's here, prepare a memorandum of law on that subject.

Mr. SOUSA. I will do that, sir.

Senator FORD. And I will submit some precise questions about the procedural situation to you. You can answer based on your consultation with general counsel. That's all right.

Mr. SOUSA. Yes, and I'll be prepared to answer that for the record.

Senator FORD. And I hope you would respond in a timely manner.

Mr. SOUSA. I will. If they are procedural questions, I'm certain that I'll be able to answer them.

Senator FORD. This is after the fact, and maybe you have no trouble answering this. You voted to approve issuance of the NOPR. At that time, what was your personal rationale for voting to issue a document that had authority for local distribution companies to reduce their contract demands by 25 percent a year for 4 years?

Mr. SOUSA. Without prejudicing my position, Senator, at that time it was purely a notice of proposed rulemaking and it was my feeling that with the state of the industry, we would like to have as much input as possible from all segments of the industry.

I had a clearly open mind at that time, and I had the thought that we needed some input from the industry. And it was in that frame of mind that I voted to have the proposed rule go out, because I knew that we would be having hearings, we would be having submissions, and a lot of information which we did not have at that time.

We were aware of something that we had to do. There was a surplus of gas and our objective was to see that the gas moved at reasonable prices.

Senator FORD. Well, I think I'm within my rights when I ask for personal rationale. So at that particular time, what was your own personal rationale for supporting the take and pay provisions?

Mr. SOUSA. I don't believe I had any personal feelings at that time, other than the fact that in the course of my performance at the Commission, I knew that there were things that perhaps could be done with the help of the industry, and I proceeded in that

frame of mind to put the notice of proposed rulemaking out in its entirety.

I can say at this point that I have great concerns with a lot of aspects of it. And I would prefer not to go beyond that to say how I feel, but I have grave concerns and I will very carefully, and I have very carefully looked at all of the submissions before the Commission.

Senator FORD. Well, I hope we're getting into the arena where it's something that's happened—and I'm not prejudicing your position or getting you into something that you're going to have to do in the future—but I wanted your personal rationale for it at that time.

Let's shift gears just a minute, Mr. Chairman, if I have the time.

Do you believe that cogeneration and small power production facilities under PURPA have made a significant contribution to the Nation's energy needs?

Mr. SOUSA. Yes; yes, I do.

Senator FORD. Has this contribution been in the public interest?

Mr. SOUSA. I would say in the majority of instances, it has been in the public interest. It has provided the power that we need at reasonable price, and it has served a useful purpose in my opinion.

Senator FORD. Frequently, cogeneration facilities in small power production facilities are built for purposes of serving the thermal and electric needs of a particular industrial installation.

Are you aware that the feasibility of many of these facilities is dependent upon third party financing arrangements, in which the cogeneration or small power production equipment is owned separately from the industrial installation which consumes the output?

Mr. SOUSA. Yes, Senator. But I have to be very careful here. There is a case on that specific point. I believe it's the *O'Brien* case. And the Commission still has it pending before us for a rehearing. And I have to be very careful in responding to the question.

And I think, all I can say at this point is that I'm aware that that type of financing is and has been used, and that there was a specific case where the third party—and that's the one I'm talking about—attempted to get a little deviation, if I could use that word, from the Commission's regulations by asking that it be provided the backup power.

But as I say, that issue is before us, and I would prefer to refrain from answering on the merits.

Senator FORD. Well, the Commission, as I understand it, has already taken action in the Alcon Inc. question, and took action which, in effect, precludes third party financing of cogeneration small power production facilities.

Mr. SOUSA. That's the same case, Senator, that is pending before us.

Senator FORD. I thought you had already taken action.

Mr. SOUSA. We took initial action which is subject to reconsideration and rehearing. And that is pending before us.

Senator FORD. Well, but the action that was taken precluded the third party financing.

Mr. SOUSA. Because in those particular facts, in that instance, they were asking for an exception from a longstanding Commission position that the third party should not be given the backup power.

Senator FORD. It's awful hard for me to agree with you on what you just said. Since I am neither an attorney nor a member of the Commission, it's difficult for me to visit with you on that too much.

But I'm going to have some written questions for you on this particular case. And I hope that you will respond to those in a timely manner and I'll have to reserve my judgment until I get the answers to that.

Mr. SOUSA. I will answer for the record, Senator, to the extent that I can.

Senator FORD. I find that so many people lean on this situation and it's probably the correct way to lean; it makes it difficult for an individual such as myself to understand the legal problems that might be involved.

In closing, Mr. Chairman, let me just say I see this FERC operation something like tax reform. Everybody's nervous about it. It seems that the way you're going, the squeeze is going on in one place, and the ripples are getting to be tidal waves.

So I would hope that something could be worked out that would kind of help everybody concerned without tearing up any one facet of the industry. I'll be very interested to watch what's going on.

Mr. Chairman, I will have some questions, and I'm not sure what you had planned for the vote here on this——

The CHAIRMAN. We don't plan to vote today, obviously.

Senator FORD. That means not this week, then.

The CHAIRMAN. We would hope to be in a position to vote at the next regular business meeting, which is next Wednesday.

Senator FORD. Can you answer my questions prior to that, Mr. Sousa?

Mr. SOUSA. Yes, sir. I will definitely answer before then.

Senator FORD. Well, I will be in a position to——

The CHAIRMAN. I think we're all sensitive to the difficulty of answering questions with respect to pending matters before the Commission, and I know that many of our concerns are associated with matters that are pending before the Commission.

To the extent that you can, though, we would like to have those questions as fully answered as is possible for you to do under that limitation.

Mr. SOUSA. I'll give you my assurance, Mr. Chairman, that I'll try to answer them as fully as possible.

Senator FORD. I apologize, Mr. Chairman; but your next regular meeting is the same day that FERC will meet—October 9.

Mr. SOUSA. I'll respond before the meeting. As soon as I get your answers--I mean your questions—I'll work on them.

Senator FORD. I'm not sure we can get you confirmed. Does he still stay on—through the 24th, is that it?

Mr. SOUSA. The 20th of this month.

Senator FORD. OK. All right. I was just concerned about the dates and the Commission not being able to meet. I was worried about the timeframe.

The CHAIRMAN. Well, I am concerned, too, that the Commission not be hamstrung by the lack of a quorum. And that's a separate

and additional question, and I don't mean to belabor that or to get into water deeper than we can negotiate today. But there is a pending nomination on the floor of the Senate which is caught up in the larger issue, and therefore is being held up.

And I suspect that unless an exception is made for the Commission nominees, even though we report favorably, as I hope that we will, it may get caught up in the larger question. And then we may indeed have a very, very severe problem with respect to the Commission's ability to operate, the consequences of which I think are speculative, but enormous.

Senator Nickles.

Senator NICKLES. Thank you, Mr. Chairman. And I also would share some of the concerns about the timing as far as your reconfirmation and the quorum, and maybe to emphasize my greater concern about what will happen on October 9.

I, like Senator Ford, have some very serious concerns about the notice of proposed rule, and I will ask you some specific questions concerning that rule, not necessarily on what will be in the final rule, or how you'll vote on it, but I am concerned about what is in the rule and how much homework the Commission has done as far as the impact of that rule would be as it is now proposed.

Commissioner Sousa, are you aware of the fact that we've had 3 days of hearings before this committee concerning the proposed rule?

Mr. SOUSA. Yes, Senator.

Senator NICKLES. Are you aware of the fact that in those hearings, it was almost unanimous—not totally unanimous—but almost unanimous. It was unanimous from the producing segment that the proposed rule would have a very devastating impact.

Mr. SOUSA. Yes, I am very aware of that, Senator. And I assure you that I'll be very careful in considering every aspect of it. I understand that your hearing and all of the testimony that was at that hearing has been made a part of our record.

Senator NICKLES. That's correct.

I would hope you would—and again, it's not just producers. We had almost unanimous—we did have a unanimous panel of producers, and we're talking about, I think, representing the most knowledgeable groups.

Also on the pipeline industry, it was almost—not totally, but almost unanimous—that the proposed rule, if it went into effect altogether would have some devastating impacts as well.

I'm concerned, I guess, because I know that they have their legal counsel parade before you and they have very thick briefs. And after you listen to those statements for a certain period of time, if you're still human, your eyes have a tendency to glass over and maybe miss some of the real points that they're trying to make as far as the impact of the rule on them and the customers that they're trying to serve.

Mr. SOUSA. Senator, I want to assure you that in addition to reading all of those comments, we have our staff preparing executive summaries of all of the materials that have come before us. So we have all of that in front of us, and we are very careful. And I speak for myself and I think I can speak for the other Commissioners. We're taking this thing extremely seriously, and we're taking

care to have all viewpoints considered before we even make a tentative decision.

Senator NICKLES. The proposed rule was issued when—May 30, is that correct?

Mr. SOUSA. It's around that time. I'm not sure of the exact date, but it was around then.

Senator NICKLES. How many Commissioners were sitting at that time?

Mr. SOUSA. I believe all five of us were there at that time and later on, Commissioner. Later on, Commissioner Richard and Commissioner Sheldon left the Commission. But that's correct; I think all five were there for every part of that hearing.

Senator NICKLES. That was when the order was issued, was May 30. I follow most of the energy issues fairly closely, but I don't think the recognition of the impact, as Senator Ford mentioned, kind of the ripple effect of some of the things that were in the order and how it would affect some of the various parties was really well known until much later than May 30.

I'm hopeful that now, because of the congressional hearings and because of the appearances before the Commission, that you're cognizant of some of the concerns that have been raised.

Mr. SOUSA. I am very aware, Senator, and I don't mean to knock the industry but I think everyone was very complacent in the beginning and nobody really paid too much attention to it. And then as we approached the time for us to make the decision, then we had a deluge of all kinds of filings and discussions in the press and everything else.

But we're fully aware of the Senate committees' concern. We are aware of your hearing that you held, and all of this will be taken into consideration, I'm sure.

Senator NICKLES. Let me ask you another question. As far as the agenda, you mentioned in your statement that the notice of proposed rulemaking is on the agenda for October 9?

Mr. SOUSA. Yes. I learned of it this morning. And as I said earlier, it is the call of the Chairman to put that matter on the agenda, and he did call me this morning and inform me that he has put it on the agenda.

But I can say to you at this point, that coming into the Commission this morning, it is not yet ready in its final form for a decision, and there will be a lot more work done on it. And I really don't know exactly what will happen between now and the 9th. It's very possible that there could be changes made.

It could be possible that the thing is taken off. I really don't know at this point. But I do assure you that all of the Commissioners are very, very concerned.

Senator NICKLES. By being on the agenda on the 9th, am I correct in my assumption that the Commission has the option of meeting the court's mandate as far as the transportation rule? They could do that, and do that alone? Is that correct?

Mr. SOUSA. That is correct. We could address the transportation part of it, part A or portions of part A. As you know, it has a contract demand part of it in there, and we could address that and not address the other portions. There are various scenarios that could be enacted here.

Senator NICKLES. You could also implement the entire rule as is now proposed. That is also an option.

Mr. SOUSA. That is possible, yes.

Senator NICKLES. With an immediate effective date? Is that a possibility?

Mr. SOUSA. Without——

Senator NICKLES. I'm just wanting to know if that's one of the options.

Mr. SOUSA. It is an option, but I'm sure the Commission and the Commissioners are aware of implementation dates. That's all I can say at this point, Senator. We would not rush into something, knowing that caution is the word.

Senator NICKLES. I would urge you to follow that line, because the more we've learned, and I think as some of the ramifications of the market outs and the block billing and other things, some of the negative implications that I've heard, I would be most concerned about the Commission report.

Let me—you also have the option at the October 9 of issuing a revised proposed rule; isn't that correct?

Mr. SOUSA. Revised to the extent that we have an obligation on the scope of notice. We can't deviate radically without renoticing it or giving the public an opportunity to realize the changes if they hadn't been aware of it from the beginning.

Senator NICKLES. This proposal, as you know, is very farreaching, and I would hope that you would do just that, and allow some time and I think study the implications.

Let me ask you a question. I'm concerned the supply implications of the proposed rule.

Mr. SOUSA. I'm sorry, Senator. I didn't catch the——

Senator NICKLES. I said I'm very concerned about the gas supply, the implications of the proposed rule. Has the Commission conducted any studies to assess the impact of the NOPR in long-term gas supply?

Mr. SOUSA. I know that there are many studies that the Commission has before it. I don't know that we have initiated a study of our own.

[Mr. Sousa confers with counsel.]

Mr. SOUSA. No, to my knowledge we have not.

Senator NICKLES. So the Commission has a proposed rule up that could make a dramatic impact on long-term gas supplies according to many of the experts in the field.

Don't you think that you should have such a study before you would issue such a rule?

Mr. SOUSA. Senator, all I can say at this point is that we are aware of the impacts, and I——

[Mr. Sousa confers with counsel.]

Mr. SOUSA. As I said, there are many studies, and they are all in the record. If you're talking of new studies, that's what I was really getting at. We have had all of the studies that have been presented to us as part of the record.

Senator NICKLES. I know that there's been studies by industry groups and other groups. I'm interested if the FERC has conducted a study on the supply implications of the proposed rule on long-term gas supply.

Mr. SOUSA. I don't believe that the Commission itself has initiated a study. It has availed itself of all of the studies that are out there and those that have been submitted. Of course, we only have to take into consideration what is part of the record, but we have the studies that are there as part of the record.

Senator NICKLES. Assuming, then, that if you haven't done your own study, I would tell you, looking at some of the studies and some of the statements that were made by some of the experts, they showed very negative long-term implications on gas supply. And I would hope that you would look at that. That's one of the negative implications that I've been hearing from the rule and I think that should be considered.

Mr. SOUSA. Senator, that would be one of the things that would prompt us to look very closely at the whole situation. That's all I can say at this point without compromising my impartiality.

Senator NICKLES. You weren't in this field, I don't guess, in the mid-1970's, but I recall it quite well. We had some severe shortages in the 1970's. We had curtailments in my State, a gas-producing State. We had curtailments throughout the Midwest and Northeast because of gas shortages, gas shortages that I think almost all experts in the field would basically say were induced by FPC price controls that were overly punitive.

I would hope that again you would keep that in mind. And could you possibly explain why the proposed block billing would not lead to the exact same result—shortages?

Mr. SOUSA. Senator, without appearing to be unresponsive, I think I would be getting into an area which would compromise my impartiality or ability——

Senator NICKLES. I will just ask you a question. We had Chairman O'Connor up here, and again I wasn't trying to figure out votes or future votes, but I was trying to figure out the impact of block billing. I see, and we had statements from a lot of panelists that indicated that block billing could cause or would cause severe shortages.

I'm interested if the Commission has looked at that.

Mr. SOUSA. I can tell you, Senator, I am not speaking for the other Commissioners, I am very aware of that situation and I am fully—I can say to you that will be part of my deliberation in making my final decision.

Senator NICKLES. Commissioner Sousa, again I'm not trying to press you on the vote, but I'm trying to make sure that the proposed rule as it is will be thoroughly analyzed.

I've heard it said, and many others have, that the NOPR would roll back the price of gas. What part of the proposed rule would do that?

Mr. SOUSA. I think—rolling back the price of expensive gas to market clearing prices? I believe that that would be the block billing part of it, or at least that would be the objective of that part of it to do that.

Senator NICKLES. I would agree with that.

What statutory authority does FERC have to roll back gas prices?

Mr. SOUSA. That is one of the questions facing me in my having to make that decision, Senator. That will be part of my consideration in deciding that.

So I'm getting into very——

Senator NICKLES. Again, I'm not pressing you for a vote, but I would like Mr. Satterfield or the rest of the counsel to provide for this committee your statutory authority, if the proposed rule should go forward in block billing, that basically would give the FERC authority to roll back gas prices.

We've had a policy basically under this country where we've had blended prices for over 30 years, and I don't read in GPA, in any way, shape or form, or the Natural Gas Act, anywhere that would give the FERC the legal authority to basically say, no, we're not going to use average gas prices, blended gas prices, that type of authority.

I'm not sure that Congress would have it, but at least it seems to me like if there would be any change that would be made, that that would be a congressional change, statutory change, and not a Commission change.

Mr. SOUSA. I would say to you, Senator, that for the rule to withstand legal scrutiny, we would have to assure ourselves and have the rationale and the basis for that in proceeding with portions of that rule, the portion that we referred to.

And that is one of the questions which would be facing us before we go ahead with a decision on that rule.

Senator NICKLES. Since we're looking at an October 9 date, which I am going to be looking at very closely, I wonder if the legal counsel would provide us, if they did go forward with a block pricing proposal, legal memoranda to justify that proposal?

I'll ask you for that now. I probably would have asked you on October 9 at 3 o'clock anyway.

Mr. SOUSA. Inasmuch as we would need that ourselves to proceed in that manner, we would have to have that, and we would make that available to you, Senator.

Senator NICKLES. I also compliment you, Commissioner Sousa, in reading your statement, and it says, quote:

> I am more convinced than ever that regulators are not legislators and should guard agaist usurping the powers of legislators. Legislators enact the law, and regulators administer those laws.

Again, I compliment you by that statement. I think that's probably the best thing I've heard from the FERC in a long, long time. I hope that the whole Commission will follow that guideline.

Mr. SOUSA. That's my firm belief, Senator.

Senator NICKLES. I've also heard it said that residential consumers—it's been said by some that residential consumers would receive the full benefit of any price rollback under the proposed rule.

What part of the NOPR would mandate the automatic and full passthrough of the entire amount to residential consumers?

Mr. SOUSA. Again, I would think the objective of that block billing portion of it would at least plan to bring down the higher cost gas to market clearing levels, and I think it's the thought that that would eventually trickle down, if I could use that term, to the consumer.

Senator NICKLES. That term will get you in a lot of trouble around this——[Laughter.]

Mr. SOUSA. But really, a lot of it will be determined by the State regulatory commissions as to how they would proceed. There would be those areas where we would not have the jurisdiction there.

Senator NICKLES. As I understand it, under the NOPR, as issued on May 30, there was nothing that would guarantee that residential consumers would be the ones who would "receive block one billing.'

Mr. SOUSA. That's correct. I think the objective of the rule is to bring down the high cost gas to market clearing levels.

Senator NICKLES. In order to guarantee that residential consumers would receive the full benefit of the claimed gas price rollback, wouldn't the Commission have to override, State public utlility commissions?

Mr. SOUSA. I'm not exactly clear, but as I said earlier, Senator, the actual pricing in the local areas would be up to the State regulatory commissions, and I would think that in those areas we would not have the jurisdiction to get into those pricing matters.

Senator NICKLES. Commissioner Sousa, is the NOPR intended to give pipelines a force majeure defense so they can break contracts with producers as a consequence of the effect of NOPR's block billing in contract demand reductions?

Mr. SOUSA. It's been said that it's unilateral. But first of all, before all of that can take place, the whole transportation itself is voluntary. It's up to the pipelines to decide, first of all, whether or not they want to go along with what the NOPR allows them to do on a voluntary basis.

Senator NICKLES. The transportation would be voluntary, but I believe the block billing under the proposed would be mandatory.

Mr. SOUSA. If the pipeline goes into that, then they have other obligations. And one of that would be that if the customer wants to reduce his demand by 25 percent, or change it into firm transportation, that's one of the things that he can do. But in back of all of this, you have to——we realize that even though the pipelines are underutilized, a lot of them have been fully spoken for or booked, and there has to be a release of that portion of it before all of this can take place.

Senator NICKLES. Just looking at your proposed rule, it says, "A three part gas rate," talking about block billing, "would be required for pipeline gas sales."

Mr. SOUSA. The block billing portion of it, that is the only portion of the whole rule that is mandatory.

Senator NICKLES. It's also probably the most objectionable part, after conducting about 10 or 12 hours of hearings, the most objectionable part of the ruling.

And again to get into my question, if the block billing provisions—isn't that basically massive? And Senator Ford has championed this cause. We've debated around this committee, Senator Bumpers has been active on it for probably months, Mr. Chairman, on contract abrogation. There was even a proposal at one time that was going to abrogate every gas contract in the book, and really block pricing would in effect do the same thing, or at least every contract that wouldn't be in "block one."

That again, to me, seems like that's a congressional function, and an improper one as far as contract abrogation. And I would hope it would be one that would be looked at.

So to hone in again on that question, was the NOPR designed to give pipelines force majeure to abrogate those contracts?

Mr. SOUSA. I don't believe it was designed to give them a force majeure to abrogate the contract, no.

Senator NICKLES. Well, if you have the local distribution companies utilize the 25-percent market out through contract demand reduction authorizations, but they aren't able to break producer's contracts, what will happen to those pipelines?

Mr. SOUSA. That portion of it would be replaced by a request to—at least that's the objective of the rule—that that would be replaced by a request to have transportation for those displaced volumes. But again, we have to face that question before we proceed with the rule, whether or not there is that authority to do that.

Senator NICKLES. I'm just trying to take you through the consequences, that if you allow the LDC's on one side to market out 25-percent, that basically you're in a situation of telling pipelines to go through and abrogate all their contracts with producers, and we've got a situation which you're probably aware of, that we have a lot of producers that are in very bad financial shape. We've got some pipelines. There's a lot of economic consequences that flow throughout.

We had one gentleman testify that the employment in the service industry fell from 600,000 to 250,000 and he said if this thing would go forward as is now proposed, that that would be declining much further.

We had another individual say that drilling would drop by 30 percent, and the economic implications as that would go through, and then the supply consequences, all the way down the line. So there's a lot of things.

Plus on this same line, taking the 25-percent market out, and then the fact that the pipelines are going to have to do something to their producers, what happens to them with their take or pay obligations? Those things would—wouldn't they just rise and the survivors that would still be on that line, or stuck on the line, whichever the case may be, be saddled with enormous liability to pay on take or pay consequences?

Mr. SOUSA. No; the objective of the rule, Senator, was—at least the objective of it is to encourage voluntary settlements of the take or pay contracts, and the Commission would look upon those in favor of voluntary settlements of those take or pay contracts.

Senator NICKLES. I don't think that would be your consequence. I think the consequence would be that you'd be abrogating a tremendous amount of contracts and forcing unbelievable—you would basically be abrogating, by force, a gun, whatever you wanted to call it, an unbelievable number of contracts that I think would have severe economic problems on the pipelines. If they weren't able to get out of that take or pay contract, I think you'd be looking at liabilities that would be so enormous that these end line users would be saddled with.

One final question, or maybe a couple: Is it possible that pipelines may go bankrupt if their local distribution companies get out

of their contracts with the pipelines, and the pipelines are not able to get out of their contracts with producers?

Mr. SOUSA. Could you phrase that question again?

Senator NICKLES. Wouldn't it be possible that pipelines could go bankrupt if the LDC's that they've been selling to can market out at 25 percent, but they're not able to market out or abrogate those contracts with the producers? Couldn't those pipelines go bankrupt?

Mr. SOUSA. If that extreme situation comes about, I suppose it could. But the objective of the rule is not to have that happen. And you are posing an extreme situation there.

Senator NICKLES. I don't see it as an extreme situation. The pipeline, Mr. Commissioner, wouldn't that pipeline—if you have an LDC that says we will market out at 25 percent, so they do that, the pipeline loses that big customer, all right. He also is sitting on some contracts that now, quote, because of block billing are not competitive, so what's he do? Is his only result going back as far as abrogating contracts with producers and maybe being saddled with take or pays that he's liable for?

Mr. SOUSA. He would be in the position of transporting gas and being——

[Mr. Sousa confers with counsel.]

Mr. SOUSA. As I was just saying, that would presuppose that the pipelines would not be doing anything. The objective of the rule is that they would be out there seeking and getting volumes for transportation and being paid for it and reserving space for the use of the pipelines for which they would be compensated.

Senator NICKLES. I want you to know, and maybe you'll look at our hearing record when we had the pipelines, but I think it was almost unanimous amongst the pipelines that said, wait a minute, that NOPR's take or pay provisions just won't work.

Mr. SOUSA. I am aware of that testimony, Senator.

Senator NICKLES. Mr. Sousa, a final question. The NOPR's contract demand reduction provisions allow local distribution companies to reduce the contract demand by 25 percent per year.

As the LDC goes off the system, won't the remaining distributors and their customers be forced to pick up all the fixed costs?

Mr. SOUSA. That's one of the questions facing us that we have to determine—the cost shifting problem. All I can say, Senator, is that we will take that into consideration to see whether or not that poses any problems in our making our final decision.

Senator NICKLES. If that was the case, wouldn't it just increase the price for the remaining consumers and possibly force some of the remaining industrial customers and electric utilities off the pipeline?

Mr. SOUSA. If there is a massive cost shifting, that could happen. But I'm sure the Commission would not want to be responsible for such precipitous action.

Senator NICKLES. I would hope so.

Mr. Sousa, I appreciate your comments today, and I hope by your comments that you are willing to take a close look at this enormous order. I can tell you that we will be taking a close look at it as well.

And, Mr. Chairman, I have no further questions.

The CHAIRMAN. Thank you very much.

Mr. SOUSA. Senator, all I can say is that this is the single most important thing that has come before me in the 4 years that I've been at the Commission and I assure you that I'll be extremely careful and very considerate in making my final decision.

Senator NICKLES. Thank you.

The CHAIRMAN. Mr. Sousa, Senator Ford touched on one issue which I think maybe should be amplified for the record. I don't know that you're able to answer the question right now. If you want to submit the answer for the record, I'd welcome it.

That would be a hypothetical of "what if." What happens if, on October 9 the Commission makes a final order, and a petition for rehearing is filed, and by October 20 no action has been taken on the petition for rehearing and no action has been taken with respect to your confirmation?

The Commission then loses a quorum. And if I read the statute correctly, the petition for rehearing is deemed to have been denied, if not granted within 30 days of the order.

And following November 2, or whatever the 30-day period would be following the date of the final order, if, following that period of time, the confirmation proceeded and the Commission was again established with a quorum, what would be the Commission's authority to act, recognizing that once the 30 days has expired, any party then could file an appeal, and the filing of the appeal would stay the Commission's authority to act further with respect to that rule?

If parties to the action had not filed the appeal prior to the reestablishment of a quorum following the end of the 30-day period, could the Commission then act with respect to the petition for rehearing?

Mr. SOUSA. The question you pose, Senator, is extremely complicated and I would respond more fully in writing. But there are problems here of a quorum to act, and it's just pretty obvious to me that if we do not have a quorum by the October 20, we could have situations where we could not act on petitions in this particular rule.

The CHAIRMAN. I would also state for the record, so that people might understand some of the difficulties with which we wrestle, that the quorum following October 20, a quorum which could act upon the pending matter, would almost necessarily involve your reconfirmation.

Mr. SOUSA. I would say so, Senator, because I think it would be highly unusual, to say the least, if to get the quorum we got a new Commissioner who was not part of the record and part of that rule. It would be very unusual. And I don't know whether it would even sustain legal challenge if that quorum constituted a new Commissioner who did not participate in it.

The CHAIRMAN. I don't want to prejudge that decision either, but it would seem to me to be an extremely unlikely thing that a new Commissioner would be permitted, or in a position, to act.

Mr. SOUSA. Yes.

The CHAIRMAN. If the Commission attempted to act with that new Commissioner as a member of the quorum, that would certain-

ly cast the proceedings under a very, very dark cloud, if it didn't simply invalidate the obvious.

Mr. SOUSA. Yes. As I said, Senator, there would be legal problems and I think there are requirements of the Administrative Procedure Act, if I recall from my California commission days, new Commissioners would have to acquaint themselves completely with the record, and many other requirements. And I think it would not sustain legal challenge if that happened.

The CHAIRMAN. You may wish to respond more fully for the record, and if you do, I would welcome that.

Mr. SOUSA. Yes, we will, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Bumpers.

Senator BUMPERS. Commissioner Sousa, let me ask you, in your statement you state that regulators are not legislators. And I assume by that, you mean regulators ought to be very circumspect about how they apply the law, and not regulate to excess or determine the limits of their own authority. Is that correct?

Mr. SOUSA. That's correct, sir.

Senator BUMPERS. Would you support a law which took away the normal deference that the courts give to regulators and their expertise and the presumption of validity of their findings?

Mr. SOUSA. No, I would not do that, sir.

Senator BUMPERS. You would not?

Mr. SOUSA. I would not take away the authority of a regulator to clearly stay within the confines of his authority. If, by your question, you meant that there would be a clear enunciation of the roles of a regulator, then I would be in favor of that; yes.

Senator BUMPERS. My point is this. Franklin Roosevelt called regulators the fourth branch of Government, the unelected branch. There has been a hue and cry and one of the things that Ronald Reagan ran on in 1980 was that people were overregulated, and that the various regulatory agencies were essentially determining the bounds of their own authority and jurisdiction, and they had run amuck.

And as I checked into it, I found that the courts invariably defer to the expertise of the regulators. So the burden of proving that a regulation is invalid is always on the person who is being regulated. It seems to me that there would be a better balance struck if we quit deferring to the expertise of regulation writers, because I've known a lot of regulation writers that were not experts.

And, No. 2, we would shift the burden to the regulator. If you're going to regulate me and you're going to cost me an awful lot of money to do it, and I take strong exception to your regulation, why should I not have the right to challenge that, and you come into court and bear the burden of proof. You've got the U.S. Treasury behind you; you're in a much better position to do it. Why should the agency not have to prove that the regulation is valid, rather than shifting that, in many instances, to some small businessman who has to defend himself as best he can?

Suppose the IRS says you cheated; the burden is immediately on you. That's all they have to say is you cheated. So then you have to bear the burden of showing you didn't cheat.

And it's true throughout the bureaucracy. The person being regulated is the one who has to bear the burden of proof and also the expense of challenging a regulation where he thinks the regulator has exceeded the scope of his authority as it was given to him by Congress.

Why shouldn't we take away that deference to the expertise of regulation writers?

Mr. SOUSA. As a general proposition, what you are proposing sounds like something that should be done. But to put it into practice would be extremely difficult, I would think, if every time a regulator made a decision and one of the challenges was that he exceeded his authority and the burden of proof would be on him to prove that he did not exceed his authority, I think we would practically bring regulation to a standstill.

I think it behooves a regulator to not overstep his bounds, but if that is an egregious problem, then I believe that there should be something to restrain regulators, and I would be in favor of that.

For myself, I can say that in the 4 years I've been at the Commission reading my decisions and my dissents, you will see that I firmly believe that we should not overstep our bounds.

Senator BUMPERS. Well, let me ask you this, then. FERC has the authority to order an electrical utility to sell power. What authority do they have to require a utility to buy power? Where in the statute does FERC get the authority to require a utility company to buy power from another utility company?

Mr. SOUSA. Well, one of the bases that I think we have that authority is under PURPA where cogenerators want to be interconnected with or sell power to the main utility, and we do have that power.

Senator BUMPERS. Is that the only power you can think of is under PURPA and cogeneration?

Mr. SOUSA. That's the one that comes immediately to mind. I could respond to that question more carefully for the record if you would like that, Senator. I could do that.

Senator BUMPERS. Now, you have the right in FERC, the statutory authority is, one, to set just and reasonable rates; correct?

Mr. SOUSA. Correct. Yes.

Senator BUMPERS. And you also have that authority for wholesale sales of power.

Mr. SOUSA. That's the authority we have for wholesale sales of power.

Senator BUMPERS. Now, in the case of a holding company, do you think a holding company should be allowed to build generating capacity and require all of its subsidiaries to participate in the taking of power or the purchase of a part of a plant where the State regulatory authorities have not been consulted, nor given so much as a "by your leave" before a plant was built?

Mr. SOUSA. Senator, that's a question pending before the Commission in one of the cases that we have decided.

Senator BUMPERS. It's not pending anymore.

Mr. SOUSA. I believe it still is.

Senator BUMPERS. You just denied a petition for rehearing.

[Mr. Sousa confers with counsel.]

Mr. SOUSA. Senator, the only thought I would have on that, that it could come back to us on remand, but in that case it is final. And the feeling of the Commission as a whole, including myself, was that if plant was constructed for requirements of the various subsidiaries, based on their requirements, then it's only fair that when that is constructed the costs with those constructed facilities should be shared on the equal basis of the requirements which brought about the construction of the plant in the first place. That's the rationale.

Senator BUMPERS. Let me give you a scenario, Commissioner Sousa.

Mr. SOUSA. Yes.

Senator BUMPERS. Since 1935, it has been the policy of the Securities and Exchange Commission in administering the Public Utility Holding Company Act not to allow a holding company to construct generating capacity.

Are you familiar with that?

Mr. SOUSA. I'm familiar with that to a certain extent, yes.

Senator BUMPERS. Now, No. 1, I'm not sure how this plant ever got built in light of that, but it did. A subsidiary was formed, in my opinion, obviously to circumvent the policy of the SEC that says a holding company may not construct capacity.

Now, just assume for the purposes of argument that a holding company does have the authority to build a plant and require each one of their its subsidiaries to take a percentage of the power—and I want to draw this distinction—we're not talking about requiring one of the subsidiaries of a holding company to buy a percentage of the plant. We're talking about requiring them to take a percentage of power from that plant.

Mr. SOUSA. Yes.

Senator BUMPERS. So if the holding company, which in my opinion has violated the law in building a plant, or at least they violated SEC policy under the PUCHA, if they build this facility and then they require each one of their subsidiaries to take a percentage of power, that means that State regulatory agencies will not ever have any jurisdiction over whether that plant should have been built in the first place or not, or whether or not the operating company within that particular State should have been required to take power.

Is that not true?

Mr. SOUSA. If they have circumvented—and I use that word very cautiously——

Senator BUMPERS. Let's assume for the purposes of argument that they had the power to build the plant, but they have only consulted one regulatory agency out of the four that their operating subsidiaries operate in. The other three regulatory agencies have not been consulted or given so much as a "by your leave" for permission to build that plant.

And then, after the plant is built, they require each one of those three utilities in States who were never consulted in effect—that is, I'm talking about the regulatory agencies were never consulted—require them to take power, and the State is preempted because FERC has exclusive jurisidiction over interstate and wholesale sales of power.

So in the future, any holding company who wants to build generating capacity under that system can circumvent all State regulatory authority, and the ratepayers of those States are left helpless and at the mercy of FERC. Is that not true?

Mr. SOUSA. I am aware, Senator, of that trend where corporations have sought to circumvent local regulation by trying to come under the jurisdiction of the FERC. And perhaps that is an area where Congress should be enacting some laws to avoid that kind of circumvention.

Senator BUMPERS. That is the best answer you could have given me, Commissioner. I couldn't agree with you more, because I think that if that is the law, and if the Supreme Court ultimately says that FERC has had the authority to do what it did, there isn't any question but there is a loophole in the law big enough to drive a wagon and team through, and that's the reason the National Governors Conference and every regulatory commission in the United States is for amending the law to stop that before it gets started.

Mr. SOUSA. Senator, I'm aware of that trend, and I'm also aware of advice being given by so-called consultants to circumvent or avoid local regulation by coming under the umbrella of Federal regulation.

Senator BUMPERS. There would be no point in Arkansas Power & Light Co. ever going out on its own, building a plant to meet its needs if any of its sister subsidiaries within the same holding company were building plants, because they would never know when they were going to be ordered to take power from them, and whether they would need this plant ultimately or not.

Let me ask your comments about this equitable argument. Forget the law for the time being. But it was clearly before FERC that Floyd Lewis, who was president of the Middle South Utility Holding Co., stated in 1978, in a hearing before the Arkansas Public Service Commission, where AP&L was asking for a certificate to build about 1,600 megawatts of power in Arkansas, and he was asked: Mr. Lewis, you want to build this 1,600 megawatts of power in Arkansas, and we don't have any objection to that if AP&L—now, he's president of the holding company, he's not a part of AP&L, but he was testifying—and he was there to testify in behalf of the Arkansas Public Service Commission giving AP&L a certificate to build that 1,600 megawatts of coal-fired generation.

And he was asked:

> Mr. Lewis, if we give you authority to do this, we have to have an assurance that we, the ratepayers of Arkansas, are not going to be required to take any part of this big nuclear generating plant called Grand Gulf. The question is, will we be required to take that power?
>
> Answer. Not if you don't need it. It'll be there if you need it, but if you don't need it, you don't have to buy it.

Now, we are saddled, as you know, with a 36-percent share of Grand Gulf when we already have 3,000 megawatts of excessive generating capacity in our State. Just from an equitable standpoint, do you consider that to be inequitable?

Did we not have a right to rely on the president of Middle South Utilities in giving them the authority to build a plant, and then turn around and get saddled with something he said we'd never get saddled with?

Mr. SOUSA. I can only say that if he said that, then——

Senator BUMPERS. That's in the record before FERC, Commissioner.

[Mr. Sousa confers with counsel.]

Mr. SOUSA. Senator, I did read that particular case before coming in here, in general terms, and that 36 percent is a 36-percent allocation of cost, and not a 36-percent requirement to take that power. But it's an allocation of 36 percent, based on what the administrative law judge determined after a long, drawn-out hearing as to the equity of the various subsidiaries.

And that was what came before us. It was the allocation of cost.

Senator BUMPERS. Commissioner, let me take slight exception to what you just said, and then I want to come back to this other equitable argument.

No. 1, if Arkansas and Mississippi and Louisiana had each been allocated an equity share of the plant—in other words, if you had said to us that you are going to have to buy 35 or 36 percent of that plant, FERC would not have had jurisdiction. The Arkansas Public Service Commission and other State commissions would have had jurisdiction.

By allocating the sale of power and saying you must take this allocation of power from that plant, that's the way they got Federal jurisdiction and cut out all the State regulatory authority.

You understand the distinction, do you not?

Mr. SOUSA. Yes, I do, sir. Yes, I do.

Senator BUMPERS. Then, you see, that's what I'm saying. And you happily said a while ago that the law probably needs to be changed on this, because anytime in the future any holding company wants to allocate power, rather than the plant, then FERC gets jurisdiction. And everybody—and this doesn't speak particularly well for FERC as far as the ratepayers of this country are concerned—everybody wants to get FERC.

You ought to be asking yourself, Commissioner, why does everybody want to get to FERC?

Mr. SOUSA. Well, that's one of the quirks of the situation where Federal law preempts local law and the people have availed themselves of—I don't want to call it a loophole—but they have availed themselves of what's available and come before the FERC rather than local regulation.

Senator BUMPERS. That's right. I told Floyd Lewis, who sat right where you did about a month ago that I marvelled at how crafty and sly they were. They worked that thing out to a gnat's eye, to make sure that Arkansas and Louisiana had no control over that thing. And it's a loophole big enough to drive a wagon and team through, and it ought to be corrected.

Let me ask you, before the chairman hands me that note over there. [Laughter.]

The CHAIRMAN. I've got a suggestion for you.

Senator BUMPERS. Just a minute. I don't take suggestions lightly.

[Pause.]

Senator BUMPERS. Yes. Let me just ask this question, and then I'll yield to Senator Hecht. They're awfully busy and have to go other places.

Commissioner, are you familiar with the fact that there is a move afoot up here to repeal the Public Utility Holding Company Act of 1935?

Mr. SOUSA. I have heard of that, but I'll confess that I don't know the details of it.

Senator BUMPERS. You don't have any feelings about it, then, one way or the other?

Mr. SOUSA. Well, it depends on what—if it's something that needs to be done in the public interest, then in a general sense I would say that I would go along with it. But I would really have to look at it more closely and I would be prepared to respond to a specific question in writing for the record.

Senator BUMPERS. Well, let me ask you this question. Do you think utility companies ought to be out, for example, getting into the insurance business or the banking industry and so on?

Mr. SOUSA. As a general proposition? If by getting into the insurance business it would lower the rates for the consumer, then it could be said, also in a general term, that that could be a good thing. But it depends on what they use it for and how they use it.

Senator BUMPERS. Well now, you should bear in mind that if we repeal the Public Utility Holding Company Act, which was passed in 1935 precisely for that reason, to keep these people in the utility business and related businesses, and to get them out of all kinds of mischief that they had gotten into—now, if we repeal that, they're going to go right back and get into the same kind of mischief. They're going to expand; they're going to get into the banking business; they're going to get into the insurance business. And who do you think is going to pick up the tab if it turns out that it didn't lower rates?

Mr. SOUSA. That was my answer, Senator. If by doing that, they are going to hurt the consumers, then I don't think that they should be allowed to do that. I'm in favor of the general proposition that a utility should be in the utility business, but again with a qualification that if they're permitted to do certain things which helps the bottom line, so to speak, and brings down the rates to the consumers, I would be in favor of that.

Senator BUMPERS. Well, nobody ever went into anything anticipating a loss. You know, if utilities get into any kind of business, it's going to be on the proposition that they're going to lower rates.

Mr. SOUSA. And so if they venture into those areas which strictly are not the utility business, then they should be responsible for the risks that they take. And the ratepayer shouldn't be charged.

Senator BUMPERS. Don't go away, Commissioner. I'll be right back.

The CHAIRMAN. Senator Bumpers, thank you very much. You'll have the opportunity to resume the questioning.

Senator Hecht.

Senator HECHT. Thank you, Mr. Chairman. I have just one point to raise, Mr. Sousa.

Mr. SOUSA. Yes.

Senator HECHT. Recently, the Public Service Commission of Nevada raised some questions concerning the Federal Energy Regulatory Commission's policy with regard to the appropriate of State public utility commissions as parties to rate cases before FERC.

The State is particularly concerned with precedents it feels FERC is making about a State's right to be heard. Since this is a very complicated topic, I do not wish to take the committee's time to explore it here and now.

But would you be willing to meet, to make yourself available to meet with my staff on this subject in the next few days?

Mr. SOUSA. Yes, I would, Senator. I certainly would.

Senator HECHT. All right. I will have my staff get with you, maybe tomorrow or Monday, before the Wednesday meeting.

Mr. SOUSA. That will be fine.

Senator HECHT. OK?

Mr. SOUSA. Sure.

Senator HECHT. Thank you very much.

The CHAIRMAN. Thank you, Senator.

Senator Bradley.

Senator BRADLEY. Thank you very much, Mr. Chairman.

Mr. Sousa, let me first tell you that I think that the recent FERC ruling on natural gas is procompetitive and proconsumer. It is remarkably positive step that the Commission has taken, if Congress will allow you to do what you, I think so expertly, decided that you would do.

I know that in this committee it is not the most popular action that FERC ever took. But I think that there are other forces out there that could come together and be quite supportive.

Now, when is the ruling supposed to be finally issued?

Mr. SOUSA. Well, all I can say, Senator, is that it is on the agenda for our next meeting of the 9th. And many different scenarios can take place. It can be deferred. Portions of it can be put aside. The whole thing can be ruled on. These are the various scenarios that can take place.

But it is on the agenda for a decision on the 9th of this month.

Senator BRADLEY. Do you have any expectation of which of those possible scenarios that you outlined will take place?

Mr. SOUSA. I'm afraid I cannot answer that because it would jeopardize my participation in that rule, Senator.

Senator BRADLEY. Could you share with the committee a little of the Commission's rationale for this ruling? How part A fits with part B and with part C and with part D. How the transportation component is related to the block billing component, and how the interaction of all of these produce the real prospect of lower prices for consumers.

Mr. SOUSA. That is one of the things that has been said of the rule, that the four or three parts, or four parts of it are interdependent, but whether that is so is something that has to be really looked into.

I don't believe that we cannot fashion something to take care of an immediate need and put out the whole rule itself. I think we could put out the whole rule; we could put out portions of it. But I, personally, don't believe that all four portions are interdependent.

Senator BRADLEY. But what was the Commission's thinking when it issued all four parts?

Mr. SOUSA. Well, the Commission's thinking was that we would want to put out a comprehensive rule which would address the situation facing the Commission, and that is that there was a glut of

gas out there which, under normal market conditions, would bring the price down. And that was not happening. The gas was not moving. And it was the position of the Commission that we ought to move gas at a reasonable price to the consumer.

Senator BRADLEY. And so the four parts of the ruling were intended to do that; is that not correct?

Mr. SOUSA. That is the thought behind the rule. Yes.

Senator BRADLEY. And could you tell me how much time went into that process?

Mr. SOUSA. Oh, I think the rule dates back to the earlier part of this year. And that, as I said earlier before you came, Senator, that this is the single most important thing facing us and facing me, and I would say that the majority of our time has been devoted to that rule.

Senator BRADLEY. And you've had lengthy hearings?

Mr. SOUSA. Yes, we've had lengthy hearings. We've had lengthy submissions, an extremely large record.

Senator BRADLEY. Do you have ny idea how many witnesses or how many submissions?

Mr. SOUSA. I'd say something in the vicinity of about 200.

Senator BUMPERS. 200?

[Mr. Sousa confers with counsel.]

Mr. SOUSA. It's more like 300.

Senator BRADLEY. 300; 300 submissions prior to the issuance of the ruling. Is that normal?

The CHAIRMAN. Could I ask one question to clarify in my own mind, because I'm not certain whether I understood whether you're talking about prior to the issuance of the proposed rule——

Senator BRADLEY. Prior to today.

The CHAIRMAN. Oh, prior to today.

Mr. SOUSA. In response to the notice of proposed rulemaking.

Senator BRADLEY. And you've had 300 witnesses.

Mr. SOUSA. Roughly 300.

Senator BRADLEY. Is that normal? Is that more than normal?

Mr. SOUSA. Well, that's a relative question. For a rule such as this——

Senator BRADLEY. You can give a relative answer.

Mr. SOUSA. I would say, being the most important rule, I would be surprised if we did not have that kind of a response.

Senator BRADLEY. So you're saying because it's such an important rule, the response has been greater than usual.

Mr. SOUSA. No. I'd say that it's an appropriate response for such an important rule. It covers almost the entire spectrum of the industry.

Senator BRADLEY. Well, good. I want to just underline again how pleased I was with all four parts of the ruling, and let you know that there is strong support here and certainly in the House, I can tell you that. I think Chairman Dingell has expressed some interest in this ruling and we certainly hope that you'll be responsive to the will of Congress, or at least that you will hear the will of Congress marching to at least two drum beats, not just one drum beat.

I know you're in a difficult position. I know the committee has taken the occasion this morning to offer their view of the issue, and I'd just like to balance the record for purposes not only of your

confirmation, but for purposes of the Commission's deliberation next Wednesday.

The CHAIRMAN. Now we know why Senator Bradley proposes that you continue as a member of this Commission.

Mr. SOUSA. I was aware of that before I came.

Senator BRADLEY. Is that a pretext for me to continue? [Laughter.]

The CHAIRMAN. Senator Bumpers.

Senator BUMPERS. Mr. Sousa, occasionally I have bought stock in the stock market and I've had that sinking feeling when I open up the business section in the morning and I see my stock has dropped precipitously, and later on I find that some idiot in the company has made a terrible mistake or the board has adopted some kind of a crazy policy or something.

When a utility company does that, they just pass their mistakes on to the ratepayers. And one of the things about that whole Grand Gulf thing that has really disturbed me is that, No. 1, we feel that from a purely equitable standpoint, as well as a legal standpoint, that Arkansas has been devastated, ravaged. I cannot overdramatize the impact of that decision on the people of my State who happen to also be 49th in per capita income. You cannot imagine what you have done.

But let me ask you this. When a colossal blunder like this occurs, why should the stockholders not bear a part of the responsibility for it?

Mr. SOUSA. Senator, as a general principle, it is not for a regulator to put himself in the shoes of the executive running that enterprise, but that is not to say that as a regulator he should overlook everything that a utility does.

There is a question of prudence in the things that the utility has done, and I believe that that is an area that a regulator should look into.

Senator BUMPERS. Who should bear the responsibility of the prudence rule? If it is found that it was imprudent or that there were significant cost overruns and so on, who should bear that responsibility—the ratepayers or the stockholders?

Mr. SOUSA. That's a very difficult question to answer. Clearly, if it is an imprudence of the magnitude that we have seen in some instances, it would seem to me that in those instances that the shareholder should certainly bear some of that responsibility. After all, he is being represented by the executive running that enterprise and the consumer in some aspects is being represented by the regulator.

And in those instances where there is gross negligence, if you want to put it that way, in the imprudence, then I would say that the stockholder should certainly bear some responsibility.

Senator BUMPERS. Why would FERC not only ratify a colossal mistake, but tell them that they were entitled to a 16½-percent return on their blunder?

Mr. SOUSA. I don't know which situation you're referring to, Senator.

Senator BUMPERS. I'm talking about the *Grand Gulf* case. FERC not only allocated this power out to the States, but they also said

that Grand Gulf, Middle South, was entitled to a 16½-percent return on its money.

Mr. SOUSA. Well, in arriving at that, I'm sure that we arrived at that in looking at the total operation of the utility, comparing it with other utilities with similar risks. And we are bound by certain things that we can and cannot do, and I'm sure that in arriving at that decision we must have observed those things that we can do and cannot do, and arrived at that decision.

Senator BUMPERS. You have wide discretion and latitude in interpreting these laws and trying to arrive at some kind of an equitable decision. We have gone back quite a ways and we are not able to find many FERC decisions that are adverse to a utility company.

Can you think of any, since you've been on the Commission?

Mr. SOUSA. Offhand, I couldn't point to a particular one, but I am sure that there have been many, many decisions that the FERC has decided which could be adverse or have been adverse to the utilities. And I'd be prepared to respond to that.

Senator BUMPERS. I would like for you to. Send me a list of the decisions where you feel that a utility company has been adversely affected by a FERC decision since you have been on the Commission.

Mr. SOUSA. Yes, I'll do that, Senator.

Senator BUMPERS. Have you filed any dissents since you've been on the Commission?

[Mr. Sousa confers with counsel.]

Mr. SOUSA. Senator, the question that you just posed to me is one that you would want since I have arrived on the Commission; is that correct?

Senator BUMPERS. Yes. Have you filed any dissenting opinions since you've been on the Commission?

Mr. SOUSA. Yes, I have.

Senator BUMPERS. How many?

Mr. SOUSA. I can't remember offhand, but I could get together my dissenting opinions if you'd like. I have filed many dissenting opinions.

Senator BUMPERS. Couldn't you just give me a ballpark estimate?

Mr. SOUSA. I'd say between 10 and 15 dissenting opinions, again subject to correction, but that's just a pure ballpark figure.

Senator BUMPERS. OK.

Well, certainly if an inequitable conclusion has been reached in any decision because of what you feel is the compulsion to follow the law, then the law clearly should be amended, should it not?

Mr. SOUSA. If, as you put it, we have arrived at a decision which we thought was correct, in a correct application of that law, and the perception is that that law brought about this unjust result, then I'd say it would behoove Congress to change that law.

Senator BUMPERS. You commented earlier about this new rush to Federal jurisdiction by building a generating facility and allocating power on a wholesale basis. The Arkansas Public Service Commission might as well disband because there isn't anything to keep this from happening again and again and again, and they're going to have no authority.

All they can do is set rates according to what FERC says they have to be set at.

You say we have to pay for 36 percent of that plant. It's up to Arkansas Public Service Commission to set rates to raise that amount of money. They have very little discretion. They have no discretion over whether the plant is going to be built, whether we need the power, anything. It is an accomplished fact by the time it gets to them.

And you agreed with me earlier that there are consultants in this country who are telling utility companies how to avoid State regulatory authority, and you agree with me that the law ought to be amended to give the States more input in these matters.

Mr. SOUSA. There is a line of cases, Senator, dating back to the *Southern California Edison* case, which ruled that there are certain areas that are exclusively in the realm of Federal jurisdiction, and it is those line of cases which I—as a matter of fact, Senator, I was on the other side of the fence. I was in a State regulatory body and there are those situations where the Federal regulation preempts State regulation, and a person who has seen this has availed himself of that type of situation and gone to the Federal regulation——

Senator BUMPERS. You see, the point I'm making, Commissioner, deals with holding companies. This sort of situation just lends itself to abuse by holding companies. If it is a solely owned utility operating within a State, this can't happen. They can't buy power or sell power without the State regulatory authority.

But here, where you have a parent company that's telling its four subsidiaries what to do in order to avoid State regulatory authority, that is an entirely different case.

Mr. SOUSA. That's part of the strategy that these people have used to go to the holding company situation, to get into that situation where they can avoid State regulation and get Federal regulation.

Senator BUMPERS. And if we were to repeal the Public Utility Holding Company Act, would you agree with me that utility companies would be merging all over this country into holding companies?

Mr. SOUSA. I really don't know, unless I take a closer look at that.

Senator BUMPERS. That certainly could be one of the results, could it not?

Mr. SOUSA. It could be one of the possibilities, yes.

Senator BUMPERS. Thank you, Commissioner.

Thank you, Mr. Chairman.

The CHAIRMAN. Commissioner Sousa, in response to a question asked by Senator Bumpers, you said you would respond with a list of decisions that were made since you have been on the Commission that were adverse to the utilities.

Would you at the same time supply in the same list, a listing of those that were adverse to the consumers?

Mr. SOUSA. Adverse to the consumers?

Senator BUMPERS. That's going to be a long list.

Mr. SOUSA. It's a long, large undertaking, but to the extent that we can respond in every respect to this committee, we will do that, Mr. Chairman.

The CHAIRMAN. I thank you, sir.

Are there any further questions? There may be some members of the committee who will desire to submit questions in writing for written response for the record. I would ask that all members and their staffs be aware that those questions should be submitted by the close of business on today so that you may get timely response back to the committee, and we will be in a position then to act next week, hopefully.

Mr. SOUSA. I thank you very much for that, Mr. Chairman, because we are under some time constraints. And again, I thank you for all of the courtesies I've received today.

The CHAIRMAN. Thank you, sir.

We have had no other requests for witnesses to appear before the committee with respect to this nomination. There being no further business to come before the committee at this time, the committee is adjourned.

[Whereupon, at 11:43 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Biographical and Informational Statement of Anthony G. Sousa

Anthony G. Sousa was born in Hong Kong. He is a United States citizen who received a Bachelor of Arts degree in 1945 from St. Luiz Gonzaga College in Macau, an island west of Hong Kong. He received a Bachelor of Laws degree in 1966 from Lincoln University Law School in San Francisco and a Master of Laws degree from the University of California School of Law in Berkeley in 1973.

Mr. Sousa is a Commissioner on the Federal Energy Regulatory Commission, which has jurisdiction over natural gas pricing, wholesale electric rates, hydroelectric licensing, oil pipeline rates and gas pipeline certification. He was nominated as a Republican appointee to a four-year term in early 1981 by President Reagan. The nomination was confirmed by the Senate on July 27, 1981 and Mr. Sousa was sworn in September 1, 1981. Mr. Sousa replaced former Commissioner George R. Hall. On November 23, 1983, Mr. Sousa was designated Vice Chairman of the Commission by Chairman Raymond J. O'Connor.

Between 1973 and 1981, Mr. Sousa served as Vice President - General Counsel of the Hawaiian Telephone Company in Honolulu, a wholly-owned subsidiary of General Telephone & Electronics Corporation. From 1968 to 1973, Mr. Sousa was counsel, then senior counsel, and finally administrative law judge at the California Public Utilities Commission in San Francisco. From 1959 to 1967, Mr. Sousa was the assistant manager for the western regional distribution division of Thomas J. Lipton, Inc., formerly known as the Lipton Tea Company in San Francisco.

Mr. Sousa is a member of the California State Bar Association, the Hawaii State Bar Association, and the International Bar Association. He is a member of the Governing Council of the Public Utility Section of the American Bar Association and a member of the Executive Committee of the National Association of Regulatory Utility Commissioners. Mr. Sousa was admitted to practice before the Ninth Circuit Court of Appeals on January 9, 1969 and before the United States Supreme Court on October 30, 1978. Mr. Sousa is a former President of the San Francisco Delta Nu Alpha Transportation Fraternity and a former director of the Chamber of Commerce, the Chinese Chamber of Commerce, and the Portuguese Chamber of Commerce of Hawaii. He is also a former director of the World Trade Association of San Francisco, the Mexican-American Political Association of northern California and the Cabrillo Portuguese Civic Club of the San Francisco Bay area.

Mr. Sousa is married to the former Elvira Dos Remedios. The couple has three children.

UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: SOUSA (LAST) ANTHONY (FIRST) GALDINO (OTHER)

Position to which nominated: Commissioner of FERC Date of nomination: August 1, 1985

Date of birth: 08 (DAY) 08 (MONTH) 27 (YEAR) Place of birth: Hong Kong, B.C.C.

Marital status: Married Full name of spouse: Elvira Maria Sousa

Name and ages of children:

Anthony Joseph	Age 35
Maria Lourdes	Age 34
Angela Maria	Age 30

Education:

Institution	Dates attended	Degrees received	Dates of degrees
University of California School of Law	1972 - 1973	L.L.M.	1973
Univ. of San Francisco/ Lincoln Univ. Law Sch.	1961 - 1966	J.D.	1966
Golden Gate College	1958 - 1961	Diploma	1961
St. Luiz Gonzaga College in Macau, P.C.	1942 - 1945	A.B.	1945
LaSalle College, Prep. in Kowloon, Hong Kong	1938 - 1941	High School Diploma	1941

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

SEE ATTACHMENT A

ATTACHMENT A

EMPLOYMENT RECORD

FROM	TO	NAME OF EMPLOYER	ADDRESS OF EMPLOYER	TITLE/DESCRIPTION
Sep 81	Present	Federal Energy Reg Comm	825 NCA Street, NE Washington, DC 20426	Vice Chairman and Commissioner
Apr 73	Aug 81	Hawaiian Tel Company	1177 Bishop Street Honolulu, HI 96813	Vice President - General Counsel
Jan 68	Apr 73	California Public Utilities Comm	350 McAllister Street San Francisco, CA 94102	Administrative Law Judge
Jul 67	Jan 68	U.S. Steel Corp.	120 Montgomery Street San Francisco, CA 94104	Freight Rate Clerk
May 59	Jul 67	Thomas J. Lipton, Inc.	San Francisco, CA	Ass't Western Reg Distribution Manager
Jan 59	May 59	Emery Air Freight Corporation	San Francisco, CA	Air Freight Agent
Aug 58	Dec 58	Hong Kong & Shanghai Bank (CA) Ltd.	San Francisco, CA	Bank Clerk
Nov 54	Jul 58	Hong Kong General Chamber of Commerce	Queen's Road Central Hong Kong	Trade Promotion and Certification Executive
Jan 54	Oct 54	South China Morning Post, Ltd.	Wyndham Street Hong Kong	Office Assistant, Printing and Publishing
Nov 52	Dec 53	Yue Tsun Land Inv. Co.	Tsun Wan, Kowloon New Terr., Hong Kong	Partner
Nov 46	Oct 52	CALTEX (Asia) Ltd.	Queen's Road Central Hong Kong	Clerical
Dec 45	Oct 46	NAAFI/EEI #4221 Service Club, British UBO, Serv Hotel (Club)	Kowloon, Hong Kong	Ass't Manager

Employment record—Continued

Military service: Describe any military service not listed above, including dates, rank, and type of discharge.

British Air Force Reserve, 1950-1958

Honorable Discharge.

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

St. Luiz Gonzaga College - B.A. with Honors - 1945

American Bar Association, member of the Governing Council of the Public Utility Section - 1981-1985

National Association of Regulatory Commissioners, Member of the Executive Committee - 1982-Present

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Dates	Office held (if any)
SEE ATTACHMENT B		

ATTACHMENT B

MEMBERSHIPS

NAME IN FULL	ADDRESS	TYPE	FROM	TO	OFFICE HELD
American Bar Ass'n	Chicago, IL	Professional	1970	Present	Member of the Gov. Council of the Pub Util Sec (1981-1985)
CA State Bar Ass'n	S.F., CA	Professional	1969	Present	None
San Francisco Bar Ass'n	S.F., CA	Professional	1969	1973	None
San Francisco Lawyers Club	S.F., CA	Professional	1969	1972	None
United Macaensis Ass'n	S.F., CA	Civic	1969	1972	None
Cabrillo Civic Club	S.F., CA	Civic	1970	1971	1st V.P.
Delta Nu Alpha Fraternity	S.F., CA & Honolulu, HI	Professional	1972	1981	Pres. & Ass't Regional V.P.
National Defense Transportation Ass'n	S.F., CA	Professional	1972	1973	None
Hawaii State Bar Ass'n	Honolulu, HI	Professional	1975	Present	President Corp. Counsel Section (1979-1980)
Chamber of Commerce of Hawaii (Also member of its World Trade Association)	Honolulu, HI	Professional	1973	1981	None
Chinese Chamber of Commerce of Hawaii	Honolulu, HI	Professional	1976	1981	Director
Portuguese Chamber of Commerce of Hawaii	Honolulu, HI	Professional	1979	1981	None
International Bar Ass'n	London, England	Professional	1980	Present	None
Nat'l Ass'n of Reg Commissioners (NARUC)	Washington, DC	Professional	1982	Present	Member of the Executive Committee

Published writings

List the titles, publishers and dates of any books, articles, or reports you have written.

"TOWARD A BETTER PROCEDURE FOR CONTESTED HYDROELECTRIC RELICENSING" - published in Public Utilities Fortnightly, March 21, 1985.

Future employment relationships

1. Will you sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate?

Not Applicable

2. Do you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization?

NO

3. Has a commitment for employment after you leave government been made to you by anyone? Have you made any such commitment?

NO

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

YES

Future employment relationships—Continued

(b) If you have been appointed for an indefinite term, are there any known limitations on your willingness or ability to serve for the foreseeable future?

Not Applicable

Financial statement

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278)

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None, except a $65 per month pension which I will receive upon reaching the age of 60 based on my 8-year service with my former employer, Hawaiian Telephone Company.

3. Are you currently a party to any legal action? If so, describe its nature and status.

NO

4. Have you ever declared bankruptcy? If so, describe the circumstances.

NO

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

YES

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

I have never been subjected to a full audit by the Internal Revenue Service in the past, other than that I have been assessed additional income tax based on their review of my returns, approximately three times in the last 10 years, which I have fully paid.

Potential conflicts of interest:

1. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

NONE

2. Describe any business relationship, dealing or financial transaction (other than taxpaying) that you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, which might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

NONE

3. Describe any lobbying activity which you have performed during the past 10 years with respect to legislative or administrative actions at the Federal, State or local level.

NONE

4. Have you been informed of the conflict of interest laws and regulations applicable to the position to which you have been nominated?

YES

Potential conflicts of interest—Continued

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to this form and the attachments thereto. Attach a statement of the appropriate agency ethics official explaining the applicable laws or regulations, any potential conflicts, and the action required to resolve such conflicts.

There appears to be no conflict; however, if any potential conflict of interest should arise, I would obtain the advice of the appropriate agency ethics official and take immediate steps to resolve it.

6. Explain how you will resolve any potential conflicts of interest that may arise in the future if you are confirmed for the position for which you have been nominated.

I will comply with all applicable conflict of interest laws and regulations and will seek the advice of appropriate ethics officials.

Public disclosure. Do you have any objections to this form and the attachments thereto being made public?

NO

AFFIDAVIT

I, Anthony G. Sousa, being duly sworn, hereby state that I have read the foregoing Statement for Completion by Presidential Nominees, including all attachments thereto, and that the information provided therein is, to the best of my knowledge and belief, current, accurate, and complete.

Anthony G. Sousa
(Signature of Nominee)

Subscribed and sworn to before me this 16th day of September, 1985

Blanche V. Williams
Notary Public

My Commission Expires October 14, 1985

Form approved by the Committee February 5, 1985.

Anthony G. Sousa
4201 Cathederal Avenue, NW, #508-E
Washington, DC 20016

September 30, 1985

The Honorable James A. McClure
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Please be advised that pursuant to section 201(b) of the Ethics in Government Act of 1978, as amended, I have informed the appropriate ethics officials that the information required by section 202(a)(1)(A) with respect to income and honoraria is current as of September 30, 1985.

Sincerely yours,

Anthony G. Sousa

District of Columbia ss

Subscribed and sworn to before me this 30th day of SEPTEMBER, 1985.

Notary Public
My commission expires: 9/30/85

cc: The Honorable J. Bennett Johnston

United States of America
Office of
Government Ethics

Office of Personnel Management
Washington, D.C. 20415

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Anthony G. Sousa, who has been nominated by President Reagan for the position of Commissioner, Federal Energy Regulatory Commission.

We have reviewed the report and have also obtained advice from the Federal Energy Regulatory Commission concerning any possible conflict in light of the Commission's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Sousa is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin
Director

Enclosure

FINANCIAL DISCLOSURE REPORT

Page 1

Reporting Status (Check Appropriate Box)

[X] Incumbent [ ] Nominee for Position or Office [ ] Termination Report

NOTE
All schedules must be filled. Enter "None" in areas on across schedules where appropriate.

Date of Filing (Month, Day, Year)

OGE Use Only

	Last Name	First Name and Middle Initial	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
Reporting Individual's Name	SOUSA	ANTHONY G.		
Position for Which Filing	COMMISSIONER	FERC	09/01/81	10/20/84 *
Location of Present Office	825 NORTH CAPITOL STREET, NE, WASHINGTON, DC 20426		9300	202-357-8377

Presidential Nominees Subject to Senate Confirmation

Name of Congressional Committee Considering Nomination

SENATE ENERGY & NATURAL RESOURCES

Do You Intend to Create a Qualified Diversified Trust?

[ ] Yes [X] No

Position(s) Held With the Federal Government During the Preceding 12 Months (if Same as Above)

Title of Position(s) and Date(s) Held

SAME AS ABOVE

Certification

I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.

Signature of Reporting Individual

A G Sousa

Date (Month, Day, Year)

MARCH 28, 1985

Agency Ethics Official's Opinion

The information contained in this report discloses no conflict of interest under applicable laws and regulations.

Signature of Designated Agency Ethics Official Reviewing Official

Michael Kilcoyne

Date (Month, Day, Year)

8/7/85

Office of Government Ethics Use Only

Comments of Reviewing Official (If additional space required, attach plain sheet)

(Check box if comments are continued on the reverse side)

* DATES SHOWN ARE FOR FIRST TERM NOW BEING CONSIDERED FOR REAPPOINTMENT.

INCOME AND INTERESTS IN PROPERTY

This schedule is applicable in the case of all reporting individuals

Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust? X

If "yes", have you reported the income from the trust? .....

If "yes", have you reported the assets of the trust? .....

If "yes", is this trust an "excepted" trust? ... Yes / No or "qualified" trust?

Are there any interests in property you have, either as an individual or as trustee, or liabilities of a spouse or dependent child who you have not reported? X

If "Yes", do you certify to all of the following:

1 They are not solely your spouse's or dependent child's financial interest or responsibility

2 They are not in any way paid or provided or result from your current work, activity or duties

3 You neither derive, nor expect to derive, any financial or economic benefit from them; and

4 You do not have knowledge as to the composition of such interest or liabilities

Page Number 2 — Schedule A

Reporting Individual's Name: SOUSA, ANTHONY G.

Agency Use Only

Date of filing (Month Day Year): MARCH 28, 1985

Schedule (A or B) Line Number Code (DC)	Identification	Income: Type of Income	Income: Category of Amount or Value	Income: Date (Mo Day Yr)	Interests in Property: Valuation of Assets
	93 Christopher Drive, SF, CA		X		B X
	136 Kalalau Street, Honolulu, HI	X	X		B X
	HAWAIIAN Tel Co Pension Plan	NO INCOME UNTIL AGE 60			H $65.00
	G.T.E. Shares		X		

PURCHASES, SALES, AND EXCHANGES

This schedule is applicable only in the case of annual and termination reports.

Page Number	3	Schedule B

Reporting Individual's Name: SOUSA, Anthony G.

Agency Use Only

Date (Month, Day, Year): MARCH 28, 1985

Report Applicable Transactions, Even if Also Reported on Schedule A

B or DC	Identification of Property (real and personal)	Type of Transaction: Purchase	Sale	Exchange	Date (Month, Day, Year): Purchase	Sale or Exchange	Category of Amount or Value (✓): $1,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	G.T.E. Shares sold in 1983		X			07/25/83		X			

SF 278 Financial Disclosure Report
(Rev. 6-91)

GIFTS AND REIMBURSEMENTS

This schedule is applicable only in the case of annual and termination reports

Page Number	4	Schedule C

Reporting Individual's Name
SOUSA, ANTHONY G.
Agency Use Only

Date of Report (Month, Day, Year)
MARCH 28, 1985

I - Lodging, Transportation, Food and Entertainment - List each source totaling $250 or more in value

Date	Source (Name and Address)	Brief Description	Value
	NONE		

II - All Other Gifts - List each source totaling $100 or more in value

Date	Source (Name and Address)	Brief Description	Value
	NONE		

III - Reimbursements - List each source totaling $250 or more in value

Date	Source (Name and Address)	Brief Description	Value
	NONE		

This schedule, except as noted for the third section, is applicable in the case of all reporting individuals.

Agency Use Only

Page Number 5 | Schedule D

LIABILITIES

No. of DC	Name and Address of Creditor	Type of Liability (Any promissory note, charge account, etc.) Give the interest rate and terms of payment	Amount of Liability	Value
	Mortgage on San Francisco Home - (1977) California Savings & Loan Association 1900 Noriega Street, San Francisco, CA 94122	30-Year Mortgage - Fixed Rate - 9 1/4		X
	Mortgage on Honolulu Home - (1976) Bank of Hawaii Bishop and King Streets, Honolulu, HI 96813	30-Year Mortgage - Fixed Rate - 9 1/4		X

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo. Yr.)	To (Mo. Yr.)
NONE				

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

This section is applicable only in the case of nominees and new entrants

Source (Name and Address)	Brief Description of Duties
NONE	

RELATIONS WITH OTHER EMPLOYERS

Do you intend to have any connection with your former employer after you enter Government service?	Parties	Date (Mo. Yr.)
*Hawaii Tel Co. Pension Plan, based on eight years of service - Payments begin at age 60 ($65.00 per month)	Anthony G. Sousa/Hawaiian Tel Co.	April 1973

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

AUG 7 1985

Mr. Anthony G. Sousa
Commissioner
Federal Energy Regulatory Commission
825 North Capitol Street, NE.
Washington, D.C. 20426

Dear Commissioner Sousa:

This letter serves as the statement from the Designated Agency Ethics Counselor of this Commission required by question six (page five) of the Statement for Completion by Presidential Nominees that you are submitting to the United States Senate Committee on Energy and Natural Resources. I have reviewed your Standard Form 278 (Financial Disclosure Report), dated March 28, 1985, and have issued my opinion to David H. Martin, Director, Office of Government Ethics, that the Form discloses no conflicts of interest under the Department of Energy Organization Act (DOE Act), P. L. 95-91, the Commission's Standards of Conduct (18 C.F.R. §§ 3c.201-206) or the conflict of interest provisions generally applicable to Federal Government officials.

Section 602(a) of the DOE Act prohibits supervisory employees from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any energy concern. The term "energy concern" is defined in Section 601(b) of the DOE Act to include any entity "significantly engaged in the business" of energy development, extraction, production, refining, transportation, distribution or sale, or significantly engaged in conducting research and development related to these activities, or in research, development or demonstration under a DOE-funded program. The term also includes any entity holding an interest in property from which coal, natural gas, crude oil, nuclear material or a renewable resource is commercially produced or obtained.

Further, Section 208, Title 18, United States Code, and applicable Commission regulations, 18 C.F.R. § 3c.204(b)(3), prohibit a government official from participating personally and substantially in any particular matter in which he, his spouse, minor child, partner, or organization in which he is serving as officer, director, trustee, partner, or employee, has a financial interest, or in which a prospective employer has a financial interest. This provision has been interpreted to prohibit participation in any particular matter whose effect on the relevant financial interest would be direct and predictable.

If I may be of further assistance, please let me know.

Sincerely,

Michael Schopf
Associate General Counsel
Enforcement & General Law

Enclosure

cc: Senate Committee on
Energy and Natural Resources

APPENDIX II

Responses to Additional Committee Questions From Anthony G. Sousa

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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

October 7, 1985

OFFICE OF THE COMMISSIONER

Honorable James A. McClure
Chairman
Committee of Energy and Natural
Resources
United States Senate
Washington, DC 20510

Dear Chairman McClure:

Please find enclosed responses to the questions submitted by various Members of the Committee after the hearing on my nomination.

If I can be of further assistance, please feel free to contact me at 357-8377.

Sincerely,

A. G. Sousa
Commissioner

Enclosures

I. Questions from Chairman McClure

Question

(1)(a). Assuming that the Commission issues the final rule in Docket No. RM85-1-000 in early October, the effective date of the rule is 30 days after issuance, the Commission lacks a quorum after October 20, and applications for rehearing are filed, what would be the result?

(1)(b). Could the rule nevertheless become effective at the end of the 30-day period?

(1)(c). Is it correct that the Commission's inability to act on applications for rehearing (because of lack of a quorum) would result in the applications being denied by operation of law?

Answer

There are three questions presented here. The answers to each are identified below.

(a). The rule would become effective at the end of the 30 day period. The filing of petitions for rehearing would not in itself operate to stay the effective date of the rule. The lack of a quorum after October 20 would prevent the Commission from acting on the petitions for rehearing.

(b). Yes. The rule could become effective at the end of the 30-day period.

(c). Yes. Under section 19 of the Natural Gas Act, section 506 of the Natural Gas Policy Act, and section 313 of the Federal Power Act, a petition for rehearing is denied by operation of law if the Commission does not act on the petition within 30 days from the date of filing.

Moreover, the lack of a quorum would prevent the Commission from acting on rate increases filed under section 4 of the Natural Gas Act and section 205 of the Federal Power Act. Hence, such increases would become effective by operation of law.

Question

(2)(a). On the assumption that the Commission lost its quorum on October 20 and then regained it subsequently, but after the expiration of the 30-day period following the filing of the last application for rehearing, could the Commission exercise its discretion pursuant to section 19(a) and, in effect, grant applications for rehearing by setting aside part of the final rule?

(2)(b). To what extent would this option be limited by the filing of petitions for judicial review?

Answer

(a). Yes. The Commission would retain jurisdiction to reconsider its decision on the rule until the record in the proceeding is filed in a reviewing court.

(b). The filing of petitions for judicial review would not limit this option. However, once the record is filed in the court, the Commission could reconsider its decision only with the leave of the court.

Question

(3). If the Commission, because of lack of a quorum, were unable to issue an order denying applications for rehearing, would this affect the ability of the parties to seek judicial review pursuant to section 19(b), which expressly provides that a Commission "order" on rehearing must be issued prior to the filing of petitions for judicial review?

Answer

No. The inability of the Commission to issue an order on rehearing would not deprive a party of its right to seek judicial review. There is no requirement that the Commission issue a rehearing order. Rehearing can be denied by operation of law. Accordingly, the "order" a party would appeal under section 19(b) would be the order on which rehearing would be denied by operation of law.

II. Questions from Senator Melcher

Question

(1). Is it correct that section 10(h) of the Federal Power Act only prohibits collusive conduct that violates section 1 of the Sherman Act?

(2). And isn't it correct that the language of section 10(h) does not bar anticompetitive activities prohibited under the Clayton Act or the Federal Trade Commission Acts?

(3). So it is correct, isn't it, that the scope of anticompetitive activities prohibited under section 10(h) is much narrower than the scope of anticompetitive activities covered by the Federal antitrust laws?

Answer

The language in section 10(h) appears to be broader than section 1 of the Sherman Act and could arguably cover sections 2 and 3. To the extent that the Clayton Act and the Federal Trade Commission Acts or portions thereof apply to regulated utilities, it would appear that section 10(h) arguably would prohibit a regulated utility from doing those acts prohibited by the Clayton Act and the Federal Trade Commission Acts.

Question

(4). I understand that at a July 30 hearing before the House Subcommittee considering the relicensing issue both you and Chairman O'Connor testified about the antitrust issue. The Chairman explained in his prepared statement that before issuing a license the Commission "conducts a review of antitrust considerations relevant to the operation of a hydroelectric facility, and can impose any condition where needed to avoid potential antitrust violations." I understand that you confirmed that statement in response to questions from Chairman Dingell. Is that correct? Let me ask you some specific questions about that statement to clarify how the Commission enforces section 10(h).

Answer

I did not specifically confirm that statement. At the July 30 hearing before the House Subommittee, I testified on hydroelectric relicensing issues. Section 10(h) was discussed. I stated that the Commission takes into consideration section 10(h) in relicensing proceedings and cited two cases as examples: the Helms case (Project Nos. 2735 and 1988) and the Pit 3-4-5 case (Project No. 233).

Question

(5)(a). First, does the Commission, in a hydro relicensing case, review the antitrust conduct of an existing licensee applying for a new license for a project to determine if the licensee's past conduct has been in compliance with the antitrust law?

(5)(b). Does it consider whether renewal of the license could raise future antitrust problems?

Answer

(a). The past performance of a licensee is taken into consideration by the Commission to determine whether or not the license should be renewed. Whether or not a licensee has engaged in conduct prohibited by the antitrust laws has been taken into consideration by a Commission Administrative Law Judge in arriving at his decision whether or not to grant a new license. This question will be coming before the Commission.

(b). Yes. The Commission considers whether renewal of the license could raise future antitrust problems. See Pacific Power and Light Company, Opinion and Order Overruling Opinion No. 88, Reversing Initial Decision and Issuing New License to Original Licensee, 25 FERC ¶ 61,052 at 61,202-3 (1983), reh'g denied, 25 FERC ¶ 61,290 (November 22, 1983).

Question

(6)(a). In what specific relicensing cases has the Commission investigated actual or threatened violations of section 10(h)?

(6)(b). Has the Commission ever found a violation of section 10(h)?

Answer

(a). Violations of section 10(h) were raised as an issue in the relicensing proceeding for the Pit 3-4-5 Project No. 233. In that proceeding, the Commission issued a new license but specifically reserved the authority to impose conditions on the licensee to remedy any anticompetitive or monopolistic practices. The antitrust issues raised were consolidated for hearing with similar allegations in the Helms Project Nos. 2735 and 1988 proceeding. These issues are currently pending before the Commission.

(b). The Commission has never found a violation of section 10(h). As stated in the answer to (6)(a), an initial decision is pending for Commission consideration.

Question

(7). What remedies are currently available to the Commission if it finds that a license applicant has violated section 10(h)?

(8). For example, could the Commission place conditions on a license to remedy past violations or to assure that further violations of the antitrust laws do not occur?

Answer

Section 10(h) does not expressly state the remedies avaialbe to the Commission. The remedies available to the Commission if a violation of section 10(h) is found is one of the issues currently before the Commission in the consolidated Helms (Project Nos. 2735, 1988) and Pit 3-4-5 (Project No. 233) proceeding. Any further discussion of this issue may preclude my participation in this case. In the Western Massachusetts case referred to in Question #9, the Commission imposed a license condition in response to allegations of anticompetitive practices.

Question

(9). Has the Commission ever placed conditions on a license to cure or prevent violations of the antitrust law? If so, when?

Answer

I am aware of two instances where the Commission, recognizing that antitrust factors are relevant to its decision to grant, withhold or condition a license, included a license condition in response to allegations of anticompetitive practices. The Commission required the licensee to make excess project power available on a nondiscriminatory basis. Western Massachusetts Electric Co., et al., 39 F.P.C. 723 (1968), aff'd sub. nom. Municipal Electric Assoc. of Mass. v. F.P.C., 414 F.2d 1206, 1209-10 (D.C. Cir. 1969); New England Power Co., 43 F.P.C. 568, 570-72, 602-06 (1970).

Question

(10). Has the Commission promulgated any regulations to implement the requirements of section 10(h) of the Federal Power Act regarding compliance with the antitrust laws? Why not?

Answer

The Commission has not promulgated any regulations to implement the requirements of section 10(h) of the Federal Power Act, because the Commission's general licensing regulations, which set forth the contents of applications for license or new license, require basic information on need for power, power marketing and transmission that assist in the assessment of potential antitrust concerns. See 18 C.F.R. §§ 4.41. 4.51 and 4.61. This basic information, coupled with the public notice and comment procedures afforded in processing applications, has been viewed as adequately meeting the Commission's needs for information regarding section 10(h) concerns.

III. Questions from Senator Metzenbaum

Question

(1). Am I correct that section 10(h) of the Federal Power Act only prohibits collusive conduct that violates section 1 of the Sherman Act and that the language of section 10(h) does not bar anticompetitive activities prohibited under the Clayton Act or the Federal Trade Commission Acts?

Question

(2). In other words, the scope of anticompetitive activities prohibited under section 10(h) is much narrower than the scope of anticompetitive activities covered by the federal antitrust laws. Is that correct?

Answer

The language in section 10(h) appears to be broader than section 1 of the Sherman Act and could arguably cover sections 2 and 3. To the extent that the Clayton Act and the Federal Trade Commission Acts or portions thereof apply to regulated utilities, it would appear that section 10(h) arguably would prohibit a regulated utility from doing those acts prohibited by the Clayton Act and the Federal Trade Commission Acts.

Question

(4)(a). First, does the Commission, in a hydro relicensing case, review the antitrust conduct of an existing licensee applying for a new license for a project to determine if the licensee's past conduct has been in compliance with the antitrust laws?

(4)(b). Does it consider whether renewal of the license could raise future antitrust problems?

Answer

(a). The past performance of a licensee is taken into consideration by the Commission to determine whether or not the license should be renewed. Whether or not a licensee has engaged in conduct prohibited by the antitrust laws has been taken into consideration by a Commission Administrative Law Judge in arriving at his decision whether or not to grant a new license. This question will be coming before the Commission.

(b). Yes. The Commission considers whether renewal of the license could raise future antitrust problems. Pacific Power and Light Company, Opinion and Order Overruling Opinion No. 88, Reversing Initial Decision and Issuing New License to Original Licensee, 25 FERC ¶ 61,052 at 61,202-3 (1983), reh'g denied, 25 FERC ¶ 61,290 (November 22, 1983).

Question

(5)(a). In what specific relicensing cases has the Commission investigated actual or threatened violations of section 10(h)?

(5)(b). Has the Commission ever found a violation of section 10(h)?

Answer

(a). Violations of section 10(h) were raised as an issue in the relicensing proceeding for the Pit 3-4-5 Project No. 233. In that proceeding, the Commission issued a new license but specifically reserved the authority to impose conditions on the licensee to remedy any anticompetitive or monopolistic practices. The antitrust issues raised were consolidated for hearing with similar allegations in the Helms Project Nos. 2735 and 1988 proceeding. These issues are currently pending before the Commission.

(b). The Commission has never found a violation of section 10(h). As stated in the answer to (5)(a), an initial decision is pending for Commission consideration.

Question

(6). What remedies are currently available to the Commission if it finds that a license applicant has violated section 10(h)? For example, could the Commission place conditions on a license to remedy past violations or to assure that further violations of the antitrust laws do not occur?

Answer

Section 10(h) does not expressly state the remedies available to the Commission. The remedies available to the Commission if a violation of section 10(h) is found is one of the issues currently before the Commission in the consolidated Helms (Project Nos. 2735 and 1988) and Pit 3-4-5 (Project No. 233) proceeding. Any further discussion of this issue may preclude my participation in this case. In the Western Massachusetts case referred to in Question #7, the Commission imposed a license condition in response to allegations of anticompetitive behavior.

Question

(7). Has the Commission ever placed conditions on a license to cure or prevent violations of the antitrust laws? If so, when?

Answer

I am aware of two instances where the Commission, recognizing that antitrust factors are relevant to its decision to grant, withhold or condition a license, included a license condition in response to allegations of anticompetitive practices. The Commission required the licensee to make excess project power available on a nondiscriminatory basis. Western Massachusetts Electric Co., et al., 39 F.P.C. 723 (1968), aff'd sub. nom. Municipal Electric Assoc. of Mass. v. F.P.C., 414 F.2d 1206, 1209-10 (D.C. Cir. 1969); New England Power Co., 43 F.P.C. 568, 570-72, 602-06 (1970).

Question

(8). Has the Commission promulgated any regulations to implement the requirements of section 10(h) of the Federal Power Act regarding compliance with the antitrust laws? If not, why?

Answer

The Commission has not promulgated any regulations to implement the requirements of section 10(h) of the Federal Power Act, because the Commission's general licensing regulations, which set forth the contents of applications for license or new license, require basic information on need for power, power marketing and transmission that assist in the assessment of potential antitrust concerns. See 18 C.F.R. §§ 4.41. 4.51 and 4.61. This basic information, coupled with the public notice and comment procedures afforded in processing applications, has been viewed as adequately meeting the Commission's needs for information regarding section 10(h) concerns.

IV. Questions from Senator Ford

Question

(1). If the Commission acts on any aspect of the NOPR at its October 9, 1985, meeting, what would be the deadline for an aggrieved person to apply for rehearing?

Answer

If the Commission were to issue a final rule on October 9, 1985, petitions for rehearing would be due on November 8, 1985.

Question

(2)(a). What is the usual practice under the Natural Gas Act for Commission action on petitions for rehearing?

(2)(b). Does the Commission generally respond to such petitions by taking action on them, rather than by failing to act within 30 days and thus allowing the rule to go into effect by operation of law?

Answer

(a). The usual Commission practice is to respond to petitions for rehearing by addressing the petitioners' substantive arguments in orders on rehearing.

(b). The Commission generally responds to such petitions by taking action on them. Although the Commission has denied some petitions for rehearing by operation of law, this is the exception rather than the rule.

Question

(3). Please provide a memorandum of law on what avenues are available to the Commission to enable it to take final action on a nondiscriminatory transportation rule in time to meet the court's deadline in the Maryland People's Counsel cases if it acts on the NOPR on October 9, and if appropriate petitions for rehearing are received on November 7? In preparing the memorandum of law, please --

(a) Take into account the requirements of the Administrative Procedure Act (5 U.S.C. 553(d)) to provide "not less than 30 days" after publication of a final rule before it takes effect;

(b) Identify any precedents for FERC taking action of such significance without meeting the 30 day publication requirement; and

(c) Identify any precedents for FERC taking action of such significance by invoking authority of the APA to deviate from the 30-day publication requirement "for good cause found and published with the rule." (5 U.S.C. 553(d)(3)).

Answer

In answer to this question, I submit a memorandum of law prepared by William H. Satterfield, General Counsel of the Federal Energy Regulatory Commission.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OCT 7 1985

MEMORANDUM TO: Commissioner Anthony G. Sousa

FROM : William H. Satterfield
General Counsel

SUBJECT : The Commission's Authority to Make a Rule Effective Less Than 30 Days After Publication

Under the Administrative Procedure Act, a substantive rule-making must normally be published at least 30 days before its effective date to afford persons a reasonable time to prepare to comply with new regulations. 5 U.S.C. 553(d). Exceptions are provided for (1) rules that grant an exemption or relieve a restriction, (2) interpretive rules and statements of policy and (3) circumstances where "good cause" exists for deviating from the 30-day publication requirement.

An agency must give supporting reasons for invoking the "good cause" exception. Among those reasons may be the good cause grounds that support waiver of notice and comment under 5 U.S.C. § 553(b), namely that the normal notice period would be "impracticable," "unnecessary" or "contrary to the public interest."

> "Impracticable" means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings. "Unnecessary" means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved. "Public interest" supplements the terms "impracticable" or "unnecessary"; it requires that public rulemaking procedures shall not prevent an agency from operating and that, on the other hand, lack of public interest in rulemaking warrants an agency to dispense with public procedure. 1/

As this legislative history of § 553(b) indicates, the good cause exception is applicable not only to minor or merely technical rules but to important rules as well when the full

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1/ S. Rep. No. 752, 79th Cong., 1st Sess. 14 (1945).

30-day publication period would be impracticable or contrary to the public interest.

Additional grounds for applying the "good cause" exception are also available under 5 U.S.C. § 553(d). Considered in conjunction with an agency's ability to waive the 30-day provision if an exemption is granted or a restriction is relieved, the grounds for waiver under § 553(d) are arguably broader than those existing under § 553(b).

Since 1978, the Commission has invoked an exception from the 30-day publication requirement on more than 50 occasions. While most of the exceptions involved minor rules or policy statements, several clearly involved significant rulemakings whose delayed effectiveness would have been contrary to the public interest. Examples of the latter include the Interstate Pipeline Blanket Certificates Rule, 50 Fed. Reg. 25,701 (June 21, 1985); the Refunds Resulting from Btu Measurement Adjustments Rule, 49 Fed. Reg. 37,735 (Sept. 26, 1984) and 49 Fed. Reg. 46,353 (Nov. 26, 1984); and the Uniform Systems of Accounts, 49 Fed. Reg. 32,496 (August 14, 1984).

In this case, the Commission's "special marketing programs" (SMPs) and one of its "blanket certificate programs" 2/ were recently invalidated by the United States Court of Appeals for the District of Columbia which found them to be discriminatory. 3/ However, the court permitted these programs to continue until October 31, 1985, to allow the Commission time to implement a nondiscriminatory transportation program in compliance with the court's decisions.

2/ Maryland People's Counsel v. FERC, 761 F.2d 768 (D.C. Cir. 1985) (MPC I); Maryland People's Counsel v. FERC, 761 F.2d 780 (D.C. Cir. 1985) (MPC II); Maryland People's Counsel v. FERC, No. 85-1029 (D.C. Cir. Aug. 6, 1985) (MPC III).

3/ See 28 FERC ¶ 61,383 (1984), order on rehearing, 29 FERC ¶ 61,334, and Order No. 234-B, 48 Fed. Reg. 34,872 (Aug. 1, 1983) (codified at 18 C.F.R. § 157.209(e) (1985)). Under these programs, producers are permitted to sell gas committed to a particular pipeline to another purchaser, while crediting the volume of such sale to the pipeline's high-priced purchase obligations. Similarly, these programs expanded an interstate pipeline's authority to transport gas for end users, including those who use gas as a boiler fuel.

Many end users rely on the invalidated transportation programs for their gas supplies and would experience service interruptions if the transportation services in which they have been participating were not allowed to be continued. Under these extraordinary circumstances, in my opinion there is sufficient justification for the Commission to invoke an exception from the 30-day publication requirement in order to act in the public interest to ensure the continuation of the Commission's programs in this important area of the gas industry.

V. Questions from Senator Bumpers and Chairman McClure

Question

In the confirmation hearing of Commissioner Anthony G. Sousa, Senator Dale Bumpers requested a list of those Commission decisions issued since 1981 that adversely affected a utility company. Chairman James McClure requested a list of Commission decisions over the same period that were adverse to the consumers.

Answer

For the purpose of this response, I will assume that the term "adverse to utilities" describes the cases in which the Commission refused to grant electric utilities' requests for approval of a rate increase or terms and conditions of service by suspending those requests. A review of Commission decisions in fiscal years 1982 through 1985 indicates over 275 cases in this category. These cases are listed by docket number on Appendix A. Included in these cases are those in which the Commission ultimately denied in whole or in part such requests. Examples of such cases are listed on Appendix B.

I will use the term "adverse to consumers" to describe those cases in which consumers filed interventions to oppose a utility's request for approval of a rate increase or terms and conditions of service and the Commission nonetheless accepted the filing without setting the case for hearing or suspending the rates. There are ten cases in this category. See Appendix C.

I do not view Commission decisions as adverse to either consumers or utilities. Rather, the Commission must ensure that the rates and terms of service offered by utilities are in the public interest. The Commission balances the consumer and investor interests to arrive at this public interest finding.

Senator Bumpers
and
Chairman McClure

APPENDIX A

A-1

RUN DATE 10/06/85
REPORT NO: R47SY127-01

DOCKET NUMBER	SUB	PC	FILING DATE	TERMINATION DATE	CODE	
ER81-749	000	C02	09/04/81			
ER81-779	000	C02	10/07/81	12/14/84	C	S
ER82-67	000	C02	11/02/81	02/27/84	D	A/G
ER82-79	000	C02	11/09/81	03/23/84	C	S
ER82-80	000	C02	11/09/81	11/14/83	D	S
ER82-123	000	C02	12/02/81	01/29/85	C	S
ER82-146	011	C02	12/09/81	09/18/85	C	S
ER82-146	000	C02	12/09/81			
ER82-211	000	C02	01/08/82	05/16/84	C	A/G
ER82-257	000	C02	01/29/82	10/12/84	C	S
ER82-318	000	C02	02/17/82	11/03/83	C	A/G
ER82-325	000	C02	02/19/82			
ER82-375	000	C02	03/10/82	05/23/84	D	S
ER82-389	000	C02	03/16/82	11/14/83	D	S
ER82-410	000	C02	03/30/82			
ER82-412	000	C02	03/30/82	04/03/85	C	S
ER82-427	000	C02	03/31/82			
ER82-481	000	C02	04/29/82	05/07/84	C	A/G
ER82-493	000	C02	05/03/82	12/22/83	D	A/G
EL82-16	003	C02	05/10/82	09/18/85	C	S
EL82-16	000	C02	05/10/82			
ER82-554	000	C02	05/28/82			
ER82-553	000	C02	05/28/82			
ER82-673	000	C02	07/22/82	04/30/84	D	A/G
ER82-701	000	C02	07/30/82	02/27/84	D	S
ER82-704	000	C02	07/30/82	12/21/83	C	S
ER82-703	000	C02	07/30/82	04/11/85	C	A/G
ER82-708	000	C02	08/02/82	02/03/84	D	S
ER82-729	000	C02	08/17/82	04/18/84	D	S
ER82-751	000	C02	08/31/82	05/02/84	D	S
ER82-793	000	C02	09/13/82	05/29/84	C	S
ER82-803	000	C02	09/17/82	02/08/84	D	S
EL82-27	003	C02	09/21/82	09/18/85	C	S
EL82-27	000	C02	09/21/82			
ER82-853	000	C02	09/30/82	08/21/84	C	S
ER82-854	000	C02	09/30/82	08/21/84	C	S
ER83-2	000	C02	10/01/82	09/17/84	C	S
ER83-21	000	C02	10/08/82	03/23/84	C	S
ER83-77	000	C02	10/29/82	02/03/84	D	S
ER83-73	000	C02	10/29/82	12/29/83	D	S
ER83-78	000	C02	11/01/82	12/21/83	C	S
ER83-110	000	C02	11/08/82	07/24/85	C	S
EL83-5	000	C02	11/09/82	07/03/84	C	S
ER83-112	000	C02	11/09/82	11/25/83	C	S
ER83-136	000	C02	11/18/82	11/25/83	C	S
ER83-138	000	C02	11/19/82	09/18/85	C	A/G

A-2

RUN DATE 10/06/85
REPORT NO: R47SY127-01

DOCKET NUMBER	SUB	PC	FILING DATE	TERMINATION DATE	CODE	
ER83-194	000	C02	12/15/82	04/18/84	D	S
ER83-196	000	C02	12/20/82	07/03/84	C	S
ER83-286	000	C02	01/31/83	03/20/84	C	S
ER83-299	000	C02	02/01/83	05/29/84	C	S
ER83-298	000	C02	02/01/83	02/24/84	C	S
ER83-297	000	C02	02/01/83	02/03/84	D	S
ER83-301	000	C02	02/02/83			
ER83-351	000	C02	02/15/83	04/05/84	C	S
ER83-333	000	C02	02/18/83	11/18/83	C	S
ER83-343	000	C02	02/23/83	04/03/84	C	S
ER83-342	000	C02	02/23/83	04/03/84	C	S
ER83-349	000	C02	02/25/83	02/08/84	D	S
ER83-350	000	C02	02/25/83	02/08/84	D	S
ER83-348	000	C02	02/25/83	02/08/84	D	S
ER83-369	000	C02	03/07/83	09/17/84	C	S
ER83-368	000	C02	03/07/83	01/11/84	D	S
ER83-396	000	C02	03/21/83	04/03/85	C	S
ER83-407	000	C02	03/25/83	05/02/84	D	S
ER83-418	000	C02	03/29/83			
ER83-420	000	C02	03/29/83	04/18/84	D	S
ER83-425	000	C02	03/30/83	03/23/84	C	S
ER83-427	000	C02	03/31/83	11/09/84	C	S
ER83-437	000	C02	03/31/83	10/02/84	C	S
ER83-430	000	C02	03/31/83	05/29/84	C	S
ER83-428	000	C02	03/31/83	11/09/84	C	S
ER83-429	000	C02	03/31/83	06/21/84	C	S
ER83-433	000	C02	03/31/83	02/03/84	C	S
ER83-487	000	C02	04/29/83	05/02/84	C	S
ER83-519	000	C02	05/19/83	02/24/84	C	S
ER83-548	000	C02	06/07/83	08/17/84	C	S
EL83-25	000	C02	06/09/83	07/03/84	C	S
ER83-561	000	C02	06/09/83	05/29/84	C	S
ER83-618	000	C02	07/01/83	05/29/84	C	S
ER83-609	000	C02	07/01/83	08/20/84	C	S
ER83-622	000	C02	07/08/83	02/03/84	C	S
ER83-628	000	C02	07/15/83			
ER83-647	000	C02	07/29/83			
ER83-646	000	C02	07/29/83	07/03/84	C	S
ER83-648	000	C02	07/29/83	05/29/84	C	S
ER83-649	000	C02	07/29/83	08/21/84	C	S
ER83-654	000	C02	07/29/83	02/29/84	C	W
ER83-652	000	C02	07/29/83	07/03/84	C	S
ER83-650	000	C02	07/29/83	05/29/84	C	S
ER83-656	000	C02	08/01/83	05/29/84	C	S
ER83-655	000	C02	08/01/83	07/03/84	C	S
ER83-665	000	C02	08/08/83	08/17/84	C	S

A-3

RUN DATE 10/06/85
REPORT NO: R47SY127-01

DOCKET NUMBER	SUB	PC	FILING DATE	TERMINATION DATE	CODE	P M
ER83-688	000	C02	08/19/83	03/20/84	C S	S
ER83-694	000	C02	08/22/83	01/11/85	C S	F
ER83-728	000	C02	08/29/83	04/03/85	C S	K
ER83-765	000	C02	09/26/83	06/21/84	C S	K
ER84-9	000	C02	10/05/83	04/05/84	C S	K
ER84-10	000	C02	10/05/83	06/20/84	C S	K
ER84-38	000	C02	10/18/83	07/03/84	C S	F
ER84-55	000	C02	10/27/83	07/22/85	C S	K
ER84-75	000	C02	11/08/83			S
ER84-80	000	C02	11/10/83	08/22/84	C S	F
ER84-82	000	C02	11/10/83	05/18/84	C S	B
ER84-79	000	C02	11/10/83	08/22/84	C S	F
ER84-81	000	C02	11/10/83	08/22/84	C S	F
ER84-131	000	C02	12/05/83			F
ER84-136	000	C02	12/05/83	06/05/85	C S	F
ER84-177	000	C02	12/28/83			K
ER84-188	000	C02	01/03/84			F
ER84-199	000	C02	01/10/84	06/20/84	C S	K
ER84-236	000	C02	02/01/84	12/14/84	C S	F
ER84-276	000	C02	02/13/84	11/09/84	C S	B
ER84-286	000	C02	02/17/84	09/17/84	C S	B
ER84-307	000	C02	03/02/84	08/22/84	C S	B
ER84-322	000	C02	03/15/84			S
ER84-355	000	C02	03/30/84			K
ER84-379	000	C02	04/09/84			K
ER84-416	000	C02	05/01/84	10/12/84	C S	S
ER84-450	000	C02	05/18/84	02/21/85	C S	B
ER84-472	000	C02	06/01/84	12/20/84	C S	B
ER84-541	000	C02	07/12/84	09/27/85	C S	F
ER84-554	000	C02	07/23/84	01/29/85	C S	K
ER84-359	002	C02	07/24/84	04/03/85	C S	S
ER84-560	000	C02	07/25/84			K
ER84-569	000	C02	07/30/84	02/21/85	C S	K
ER84-568	000	C02	07/30/84			K
ER84-574	000	C02	07/31/84			K
ER84-576	000	C02	08/01/84			B
ER84-591	000	C02	08/09/84			K
ER84-588	000	C02	08/09/84	08/21/85	C S	K
ER84-589	000	C02	08/09/84	08/21/85	C S	K
ER84-592	000	C02	08/09/84	09/18/85	C S	K
ER84-587	000	C02	08/09/84	08/21/85	C S	K
ER84-590	000	C02	08/09/84	08/21/85	C S	K
ER84-604	000	C02	08/16/84			B
ER84-679	000	C02	09/14/84	04/26/85	C S	K
ER84-694	000	C02	09/21/84			K
ER84-705	000	C02	09/27/84			K

A-4

RUN DATE 10/06/85
REPORT NO: R47SY127-01

DOCKET NUMBER	SUB	PC	FILING DATE	TERMINATION DATE	CODE
ER85-81	000	C02	10/31/84	08/21/85	C S
ER85-106	000	C02	11/05/84		
ER85-109	000	C02	11/07/84		
ER84-572	001	C02	11/13/84		
ER84-571	001	C02	11/13/84		
ER85-184	000	C02	12/14/84	09/18/85	C S
ER85-194	000	C02	12/21/84	09/18/85	C S
ER85-251	000	C02	01/24/85	08/21/85	C S
ER85-264	000	C02	01/30/85	08/02/85	C S
ER85-156	001	C02	01/31/85		
ER85-300	000	C02	02/13/85	09/18/85	C S
ER85-375	000	C02	03/18/85		
ER85-380	000	C02	03/20/85		
ER85-398	000	C02	03/28/85	09/27/85	C S
ER85-400	000	C02	03/29/85		
ER85-401	000	C02	03/29/85	09/18/85	C S
ER85-404	000	C02	03/29/85		
ER85-406	000	C02	04/01/85		
ER85-424	000	C02	04/10/85		
ER85-425	000	C02	04/10/85		
ER85-468	001	C02	04/29/85		
ER85-461	001	C02	04/29/85		
ER85-476	001	C02	05/01/85		
ER85-475	001	C02	05/01/85		
ER85-486	001	C02	05/06/85		
ER85-534	001	C02	05/23/85		
ER85-538	001	C02	05/24/85		
ER85-477	002	C02	06/21/85		
ER82-604	006	C02	07/11/85		
ER85-644	001	C02	07/24/85		
ER85-646	001	C02	07/26/85		
ER85-647	001	C02	07/26/85		
ER85-654	001	C02	07/30/85		
ER85-659	001	C02	08/01/85		
ER85-689	001	C02	08/16/85		
ER85-707	001	C02	08/23/85		
ER84-576	010	C02	08/27/85		
ER85-375	004	C02	08/27/85	09/09/85	C G

176 RECORDS PRINTED

A-5

RUN DATE 10/06/85
REPORT NO: R47SY127-01

DOCKET NUMBER	SUB	PC	FILING DATE	TERMINATION DATE	CODE
ER81-736	000	C04	09/02/81	09/17/84	C S
EC82-4	000	C04	12/14/81		
ER82-448	000	C04	04/08/82		
ER82-462	000	C04	04/16/82	08/21/85	C S
ER82-483	000	C04	04/30/82	06/13/85	C A/G
ER82-539	000	C04	05/21/82	08/21/85	C S
ER82-545	000	C04	05/25/82		
ER82-546	000	C04	05/25/82		
ER82-579	000	C04	06/07/82	03/23/84	C S
ER82-616	000	C04	06/18/82	06/13/85	C A/G
ER82-618	000	C04	06/21/82	05/20/85	C S
ER82-622	000	C04	06/24/82	05/20/85	C S
EL82-20	000	C04	06/30/82		
ER82-661	000	C04	07/19/82	05/20/85	C S
ER82-715	000	C04	08/04/82		
EF82-2011	003	C04	08/16/82		
ER82-734	000	C04	08/19/82	08/21/85	C S
ER82-769	000	C04	09/02/82		
ER82-774	000	C04	09/03/82		
ER82-810	000	C04	09/20/82	08/21/85	C S
ER82-829	000	C04	09/23/82		
ER83-45	000	C04	10/18/82		
ER83-46	000	C04	10/18/82		
ER83-44	000	C04	10/18/82		
EL83-1	000	C04	10/21/82	02/24/84	C S
EL83-4	000	C04	11/03/82	07/03/84	C S
ER83-127	000	C04	11/16/82	08/21/85	C S
ER83-187	000	C04	12/10/82		
ER83-192	000	C04	12/14/82	09/17/84	C S
ER83-209	000	C04	12/23/82		
ER83-219	000	C04	12/30/82		
ER83-227	000	C04	01/03/83		
ER83-241	000	C04	01/10/83	05/20/85	C S
EL83-6	000	C04	01/11/83		
ER83-248	000	C04	01/13/83	09/17/84	C S
EL81-14	002	C04	01/13/83		
EL83-7	000	C04	01/14/83	03/23/84	C S
ER83-334	000	C04	02/18/83		
ER83-382	000	C04	03/14/83		
EL83-14	000	C04	03/31/83	04/16/84	D S
ER83-481	000	C04	04/27/83	11/16/83	C S
ER83-523	000	C04	05/23/83	07/20/84	C S
ER83-541	000	C04	06/06/83		
ER83-540	000	C04	06/06/83	08/21/85	C S
ER83-567	000	C04	06/13/83		
ER83-573	000	C04	06/17/83	08/21/85	C S

A-6

RUN DATE 10/06/85
REPORT NO: R7SY127-01

DOCKET NUMBER	SUB	PC	FILING DATE	TERMINATION DATE	CODE
ER83-611	000	C04	07/01/83		
ER83-610	000	C04	07/01/83		
ER83-635	000	C04	07/20/83		
ER83-657	000	C04	08/01/83		
ER83-672	000	C04	08/12/83	07/03/84	C S
ER83-687	000	C04	08/16/83	05/20/85	C S
ER83-706	000	C04	08/22/83		
ER83-712	000	C04	08/29/83	05/20/85	C S
ER83-726	000	C04	08/30/83		
ER83-729	000	C04	09/01/83	04/18/84	C S
ER83-736	000	C04	09/08/83	07/20/84	C S
ER83-748	000	C04	09/15/83	08/21/85	C S
ER83-766	000	C04	09/26/83		
ER84-26	000	C04	10/11/83		
ER84-31	000	C04	10/14/83		
ER84-40	000	C04	10/19/83		
ER84-42	000	C04	10/21/83	08/21/85	C S
EF84-2011	006	C04	10/26/83		
ER84-63	000	C04	11/01/83	05/29/84	C S
ER84-62	000	C04	11/01/83	06/21/84	C S
ER84-74	000	C04	11/08/83	12/21/84	C W
ER84-91	000	C04	11/14/83	04/10/84	C S
ER84-108	000	C04	11/21/83	05/29/84	C S
EL84-6	000	C04	12/06/83		
ER84-146	000	C04	12/09/83	02/21/85	C S
ER84-156	000	C04	12/13/83		
ER84-163	000	C04	12/15/83	08/21/85	C S
ER84-198	000	C04	01/06/84		
ER84-305	000	C04	03/01/84		
ER84-347	000	C04	03/29/84	08/21/85	C S
ER84-403	000	C04	04/20/84	08/21/85	C S
EL84-15	000	C04	05/24/84		
ER84-492	000	C04	06/13/84	08/21/85	C S
ER84-344	001	C04	06/15/84	04/15/85	C S
ER84-505	000	C04	06/21/84		
ER84-348	001	C04	06/22/84		
ER84-525	000	C04	07/02/84	12/14/84	C S
EL84-29	000	C04	07/30/84		
ER84-579	000	C04	08/02/84		
ER84-618	000	C04	08/24/84	08/21/85	C S
ER84-504	001	C04	09/04/84	07/22/85	C S
ER84-687	000	C04	09/18/84	04/17/85	C S
ER84-690	000	C04	09/20/84	08/21/85	C S
ER84-696	000	C04	09/24/84	08/21/85	C S
ER84-707	000	C04	09/28/84		
ER85-41	000	C04	10/12/84		

A-7

RUN DATE 10/06/85
REPORT NO: R47SY127-01

DOCKET NUMBER	SUB	PC	FILING DATE	TERMINATION DATE	CODE
ER84-582	001	C04	11/01/84	07/21/85	C S
ER85-130	000	C04	11/16/84		
EL85-12	000	C04	11/26/84		
ER84-654	001	C04	12/11/84	07/22/85	C S
ER85-187	000	C04	12/18/84	08/21/85	C S
ER85-204	000	C04	12/26/84		
ER85-412	000	C04	04/02/85		
ER85-451	000	C04	04/22/85	09/27/85	C S
ER79-97	002	C04	05/16/85		
ER85-521	001	C04	05/20/85		
ER85-550	001	C04	05/31/85		
ER85-582	001	C04	06/19/85		
ER85-603	001	C04	06/27/85		
ER85-596	001	C04	06/28/85		
ER85-608	001	C04	07/08/85		
ER85-648	001	C04	07/29/85		
ER85-692	001	C04	08/16/85		

109 RECORDS PRINTED

285 TOTAL RECORDS PRI

APPENDIX B

1.	Nantahala Power & Light Co.	19 FERC ¶ 61,152 (1982)
2.	Southern California Edison Co.	20 FERC ¶ 61,301 (1982)
3.	New England Power Co.	22 FERC ¶ 61,123 (1983)
4.	Public Service Co. of New Mexico	23 FERC ¶ 61,218 (1983)
5.	Commonwealth Edison Company	23 FERC ¶ 61,219 (1983)
6.	Cleveland Electric Illuminating Co.	23 FERC ¶ 61,380 (1983)
7.	Delmarva Power & Light Co.	24 FERC ¶ 61,199 (1983)
8.	Delmarva Power & Light Co.	25 FERC ¶ 61,022 (1983)
9.	Pennsylvania Power Company	26 FERC ¶ 61,354 (1984)
10.	Southern Company	20 FERC ¶ 61,332 (1982)
11.	Pennsylvania Power Company	23 FERC ¶ 61,006 (1983)
12.	Middle South Energy	23 FERC ¶ 61,277 (1983)
13.	Amp-Ohio v. Daytona Power & Light	19 FERC ¶ 61,158 (1982)
14.	SMUD v. Pacific Gas and Electric	23 FERC ¶ 61,042 (1983)
15.	New England Power Company	31 FERC ¶ 61,378 (1985)

APPENDIX C

CASES IN WHICH INTERVENTIONS WERE FILED BUT
COMMISSION ACCEPTED RATE WITHOUT SUSPENSION

1.	Iowa Power & Light Company, Docket No. ER81-750	(Unreported)
		Rehearing 18 FERC 61,025
2.	Toledo Edison Company, Docket No. ER82-424	19 FERC 62,475
3.	Minnesota Power and Light Company, Docket No. ER82-769	21 FERC 61,052
4.	Appalachian Power Company, Docket No. ER83-63	21 FERC 61,309
5.	Empire District Electric Company, Docket No. ER83-367	23 FERC 61,167
6.	Pacific Power and Light Company, Docket No. ER83-424	23 FERC 61,359
7.	Pacific Power and Light Company, Docket No. ER84-65	26 FERC 61,268
8.	Detroit Edison Company, Docket No. ER84-133	26 FERC 61,246
9.	Central Illinois Public Service Co., Docket No. ER84-360	27 FERC 61,334
10.	Arkansas Power & Light Company, Docket No. ER84-483	28 FERC 61,278

VI. Question from Senator Nickles

QUESTION

In the hearing, Senator Don Nickles asked Commissioner Sousa "What statutory authority does FERC have to roll back gas prices? . . .I would like Mr. Satterfield and the rest of the counsel to provide for this committee your statutory authority, if the proposed rule should go forward in block billing, that basically would give the FERC authority to roll back gas prices."

ANSWER

See attached memorandum from William H. Satterfield, General Counsel, to Commissioner Sousa.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON D C 20426

OFFICE OF THE GENERAL COUNSEL

October 7, 1985

MEMORANDUM TO: Anthony G. Sousa
Commissioner

FROM : William H. Satterfield
General Counsel

SUBJECT : Question By Senator Don Nickles Regarding the Commission's Authority To Roll Back Gas Prices

During your confirmation hearing on October 3, 1985, Senator Nickles asked you to have the Office of General Counsel provide the Committee on Energy and Natural Resources with the statutory authority for the Commission to roll back gas prices, if the Notice of Proposed Rulemaking in RM85-1-000 should go forward with its block billing proposal.

The NGPA imposed maximum lawful prices upon virtually all gas in the lower-48 states. Some of this gas has been price deregulated. Other gas will become price deregulated in July 1987. Still other gas remains regulated subject to a maximum lawful price under the NGPA. The Commission may not establish ceiling prices for any of this gas higher than that established under Title I of the NGPA. Regarding gas for which there is no ceiling price, the Commission may not set a ceiling price.

As proposed by the Commission's Notice of Proposed Rulemaking (NOPR) in Docket No. RM85-1-000 (May 30, 1985), Part D, the billing procedure would only affect the procedures by which a pipeline bills its customers for purchased gas costs, and would not regulate wellhead prices and contracts removed from the Commission's jurisdiction by section 601 of the NGPA. See Pennzoil Co. v. FERC, 645 F.2d 360, 380-1 (5th Cir. 1981), cert. den., 454 U.S. 1142 (1982). The NOPR does not propose to roll-back any maximum lawful price.

In response to post-hearing questions from Chairman Phil Sharp of the Subcommittee on Fossil and Synthetic Fuels, Committee on Energy and Commerce, U.S. House of Representatives, arising out of a hearing held July 27, 1985, Chairman Raymond J. O'Connor clarified that the proposed billing procedure would not require that any wellhead gas prices be rolled back, as follows:

Q: One of the Commission's stated intentions of the proposed rule is to 'level the playing field.' By this the Commission appears to mean that it believes that rolled-in gas pricing allows some pipelines to make sales they would not otherwise make except for the fact that they have rights to large amounts of price controlled gas which can be used to average down their marginal gas costs. In attempting to 'level the playing field,' is the Commission penalizing those pipelines that managed their gas purchase programs in a fashion that kept their cost of purchased gas low and rewarding those pipelines that were less efficient and allowed their purchase gas costs to escalate?

A: No. If a pipeline has kept its cost of purchased gas market-sensitive, then its block 2 gas costs will be market-sensitive and it may be rewarded by being able to attract new customers for the sale of block 2 gas. Conversely, a pipeline whose block 2 purchased gas costs may be market-insensitive may find it difficult to market its block 2 gas. In this manner, all pipelines will be competing for new customers and new sales on the basis of the prices being paid for new gas. */

The proposed regulatory text in the NOPR would only amend those sections of the Commission's regulations that relate to the filing by pipelines of their gas purchase costs. The proposed regulatory text did propose to require each pipeline to bill its customers for the costs of gas priced under sections 104, 106(a) and 109 of the NGPA ("Block 1" gas) separately from all other costs of gas ("Block 2" gas), but did not propose to change in any way the statutory standards or Commission precedents governing the prudence of the recovery of such costs.

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*/ Letter from Raymond J. O'Connor, Chairman, FERC to Honorable Phil Sharp, Chairman, Subcommittee on Fossil and Synthetic Fuels. August 9, 1985.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

October 8, 1985

Honorable James A. McClure
Chairman
Committee of Energy and Natural
Resources
United States Senate
Washington, DC 20510

Dear Chairman McClure:

Please find enclosed a memorandum of law from the Commission's General Counsel on the question, if, for any reason, the Commission does not have a quorum the second week of November, and the time period for petitions for rehearing expires, what happens. This memorandum is in response to Senator Ford's request made during my confirmation hearing on October 3.

If I can be of further assistance, please feel free to contact me.

Sincerely,

A. G. Sousa
Commissioner

Enclosure

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OCT 8 1985

MEMORANDUM TO: Commissioner Anthony G. Sousa

FROM : William H. Satterfield
General Counsel William H. Satterfield

SUBJECT : Effect of Lack of a Quorum in RM85-1-000

During your confirmation hearing on October 3, 1985, Senator Ford asked the following question regarding the issuance of a final rule in RM85-1-000: "If, for any reason, the Commission does not have a quorum the second week of November, and the time period for petitions for rehearing expires, what happens?" (See Transcript, p. 17.)

Both the Natural Gas Act (NGA) and the Natural Gas Policy Act (NGPA) prescribe the outcome. Section 19(a) of the NGA, 15 U.S.C. § 717r(a), provides:

> Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order . . . . Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.

Section 506(a)(2) of the NGPA, 15 U.S.C. § 3416(a)(2), contains a comparable provision:

> Any person aggrieved by any order issued by the Commission in a proceeding under this Act to which such person is a party may apply for

> a rehearing within 30 days after the issuance of such order . . . . Upon the filing of such application, the Commission may grant or deny the requested rehearing or modify the original order without further hearing. Unless the Commission acts upon such application for rehearing within 30 days after it is filed, such application shall be deemed to have been denied. No person may bring an action under this section to obtain judicial review of any order of the Commission unless --
>
> (A) such person shall have made application to the Commission for a rehearing under this subsection; and
>
> (B) the Commission shall have finally acted with respect to such application.
>
> For purposes of this section, if the Commission fails to act within 30 days after the filing of such application, such failure to act shall be deemed final agency action with respect to such application.

Likewise, the Commission's regulations reflect these statutory provisions. Under the Rules of Practice and Procedure, 18 C.F.R. § 385.713(f), "[u]nless the Commission acts upon a request for rehearing within 30 days after the request is filed, the request is denied." Similarly, the Commission's NGPA rules at 18 C.F.R. § 286.102(d)(3) provide:

> Unless the Commission acts upon the application within 30 days after it is filed, such application shall be considered to have been denied. If the Commission grants rehearing in part, any part of the application outside the scope of the order granting rehearing shall be considered to have been denied.

Moreover, neither the filing of a petition for rehearing nor the filing of a petition for judicial review operates as a stay of a Commission order. 15 U.S.C. § 717r(c); 15 U.S.C. § 3416(a)(5); 18 C.F.R. § 385.713(e).

Applying these provisions to Senator Ford's question, the Commission, lacking a quorum, would not be able to act on the petitions for rehearing. Therefore, they would be denied by operation of law 30 days after the date the petitions were filed.

Assuming a stay had not previously been granted, the final regulations would go into effect on the date specified in the RM85-1-000 order.

It should be noted that the Commission would retain jurisdiction over the matter until the record in the proceeding were filed in a reviewing court. 15 U.S.C. § 717r(a); 15 U.S.C. § 3416(a)(4). See Texas-Ohio Gas Co. v. FPC, 207 F.2d 615, 617 (D.C. Cir. 1953); The California Company v. FPC, 411 F.2d 720 (D.C. Cir. 1969). Therefore, if the Commission regained a quorum before the record were filed, it could "upon reasonable notice and in such manner as it shall deem proper" modify its earlier order on its own initiative. 15 U.S.C. § 717r(a).

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

October 10, 1985

Honorable James A. McClure
Chairman
Committee on Energy and Natural
Resources
United States Senate
Washington, DC 20510

Dear Chairman McClure:

Please find enclosed a memorandum from the Commission's General Counsel on the legal justification for the block billing proposal. This memorandum is in response to Senator Nickles' request made at my October 3 confirmation hearing and reflected at pages 34-35 of the transcript of that hearing.

If I can be of further assistance, please feel free to contact me.

Sincerely,

A. G. Sousa
Commissioner

Enclosure

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OCT 9 1985

Memorandum to: Commissioner A. G. Sousa

From: William H. Satterfield
General Counsel

Subject: Question from Senator Nickles Regarding Legal Authority for Proposed Block Billing Procedure for Gas Costs

At your confirmation hearing on October 3, 1985, before the Committee on Energy and Natural Resources, Senator Don Nickles asked you to have counsel provide to him legal memoranda justifying the legal authority of the Commission to promulgate the proposed block billing procedure.

In response to Senator Nickles request, I am attaching a copy of the Notice of Request for Supplemental Comments on Part D of Docket RM85-1-000 (Part D) issued by the Commission today. Pages 25-37 of the Notice contain an analysis of the Commission's legal authority to depart from its policy of full rolled-in pricing of gas costs by interstate pipelines under the Commission's jurisdiction. The analysis concludes the Commission has adequate legal authority for the departure from the rolled-in pricing policy proposed by the Notice.

Attachment

Committee Note.--The attachment has been retained in Committee files.